Supreme Court, U.S.
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No._____

In The

SUPREME COURT OF THE UNITED STATES

In re:

JIJIBHOY J. PATEL, M.D. &
SILLOO J. PATEL, B.A.

Petitioners,

v.

UNITED STATES OF AMERICA

Respondent.

On Writ Of Certiorari
To The
United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Jijibhoy J. Patel, M.D. & Silloo J. Patel, B.A.
In Pro Se
673 Miller Drive
Oakley, CA 94561.
Telephone: (925) 679 - 3900

70 pp

ISSUES

Introduction to Issue # 1

The Ninth Circuit Appellate court en banc decided on April 14, 2003 that the Appellants' reopening of their Habeas petition in September 1998 of the original Habeas filed in March 1993 as second or successive Habeas filing

Issue # 1.

The issue presented to the U.S. Supreme Court is whether the Patels' refilling their habeas petition in September 1998 to reopen their March 1993 Habeas petition was " a pending" versus secondary or successive petition?

Introduction to Issue # 2

The Ninth Circuit denied the Patels to reopen their Habeas petition (vide supra) and thus held that their case be considered time – barred by the application of AEDPA Rule of April 24, 1996.

Issue # 2.

Issue # 2 to the united States Supreme court is whether the Ninth Circuit Court of Appeals erred in applying Patels' case as post AEDPA rule as "time- bar" as the case considered second or successive?

Introduction to Issue # 3

All the Circuit Courts of Appeal have not yet decided on to the law of AEDPA's applicability to the non-capital cases e.g., some Circuit Courts of Appeals at times applying AEDPA and other Circuit courts of Appeal not applying AEDPA to have non-uniformity. Therefore, the U.S. Supreme Court's decision will bring about the uniformity amongst all the Circuit courts of Appeal by non application of AEDPA to non-capital and non-violent cases that had occurred in pre AEDPA era with the habeas appeal already entering into the judiciary system.

Issue # 3

Are there any other authorities either in form of statutes and cases that can be applied to bring about uniformity for application of AEDPA in non-capital cases of pre AEDPA era?

TABLE OF CONTENTS

		page
1.	Opinion below, U. S. Supreme Court's jurisdiction and Introduction	1
2.	Issue I: Does the present case of Patels v. U.S.A. (1998 habeas petition) a pending case?	3
3.	Patels' 1998 habeas petition is not a second or successive petition.	8
4.	Gap or delay in filing of 1998 habeas petition be considered as pending	9
5.	The Ninth Circuit Court of Appeals erred by going against their own decision.	9
6.	The Ninth Circuit Court of Appeals erred in dismissing January 1993 habeas petition on their own accord.	10
7.	The Judge and the litigating counsels did not advise of adverse consequences in rejecting the plea bargain.	10
8.	The Ninth Circuit Court of Appeals erred in deciding for the petitioner, Mrs. Patel as out of U. S. Eastern District court's jurisdiction.	12
9.	**Issue II: Does Pre AEDPA law govern the Patels' case or AEDPA's statute of limitation apply to the present case?**	**12**
10.	Eighth Amendment of Constitutional Right.	14
11.	Equal Protection Clause.	14
12.	Relating back to Rule FRCP 15 (c)	15
13.	The Ninth Circuit Court of Appeals erred in applying AEDPA retroactively.	15
14.	Patels' good cause for overcoming AEDPA.	16
15.	Application of AEDPA to 1998 petition is futile.	16
16.	**Issue III: Other authorities.** Patels' good cause for not being able to expedite 1998 petition.	18
17.	Litigating counsels' ineffective assistance.	19
18.	The Contemporary authorities.	21
19.	The Ninth Circuit Court of Appeals late in grang the certiorari.	22
20.	The lower courts failed to appoint a counse	23
21.	The lower court failed to review the Patels' Constitutional Rights to freedom.	23
22.	The Suspension Clause.	23
23.	Double Jeopardy.	25

page
24. Equitable Estoppel / Tolling. 26
25. Broad Public Issue at Large 27
26.Conclusion. 28

TABLE OF CONTENTS FOR APPENDIX

A. Petitioners' and habeas appeal counsel's communications. (8 pages).
B. The Ninth Circuit Court of Appeals' order of dismissal En Banc. (1 page).
C. The Ninth Circuit Court of Appeals' affirming the dismissal order of the U.S. Eastern District Court (2 pages)..
D. U. S. Eastern District Court's order of dismissal ***without prejudice.*** (2 pages).
E. The Ninth Circuit Court of Appeals' order of "Reversed and Remanded" (2 pages)..
F. The U.S. Eastern District Court's order of **Sua Sponte** dismissal of Patels' 1998 habeas petition as "time- barred"(2 pages).
G. The U. S. Eastern District Court's order to the United States to file and serve its opposition to the motion (to oppose reverse and remand order of the Ninth Circuit Court!) and the defendants to file their reply to the opposition.(1 page).
H. U. S. Eastern District Court's order of guilty verdict in 1992. (2 pages).
I. The Ninth Circuit Court of Appeals' order of dismissal of January 1993 habeas petition after construing as motion for voluntary dismissal of their own accord! (1 page)
J. Copy of the front and second last page of oral argument transcript of January 1993 habeas petition.(2 pages).

TABLE OF AUTHORITIES

		Page
1.	Anthony Siers v. Weber (1997)	6
2.	Abrams v. Johnson, No.95 – 1425 June 1997	14
3.	Blazek v. Rockland, 971 F.2d 1048, 1410 (9th cir.1990)	12
4.	Bennett v. Artuz, 199 F.3d 116, 119 (2nd cir.1999)	27
5.	Calder v. Bull, 3 U.S. (1 Dall.), 386, 390 (1798)	13
6.	Carey v. Saffold, 536 U.S. 214 (2002).	9
7.	Duncan v. Walter No. 00-121 S.Ct. 480 (2000)	5,18, 27
8.	Equal Protection, 347 U.S. 497 –99 (1977)	14
9.	Eric Cornell Clay v. U.S.A. No –01-1500 (2002)	5,15
10.	FEC v. NRA Fund, 513 U.S. 88, 95 (1994)	25
11.	Felka v. Turpin, 518 U.S. 651,660, 664 (1996)	24
12.	Ferguson v. Palmetter, No 01-36143, D.C.	24
13.	Florida child molestation case, June 2003.	29
14.	Gonkleve 144F.3d 128-129	17
	at 132	25
15.	Green v. Johnson, 116 F. 3d 1115,1119 (5th circ.1997)	4
16.	Green v. White, 223 F.3d 1001(9th cir. 2000)	3
17.	Henry v. Lungren, 164 F.3d 1240 (9th cir.1999)	3
18.	Hohn v. U.S.A. 524 U.S. 236, 264(1998)	17
19.	Hunter v. U.S.A 101 F. 3d 1565 (11th circ.1996) 137 L ed.2d(1997)	3
20.	INS v. Magana – Pizzano, 119 s. ct.1137 (1999).	4,9
21.	INS v. St. CYR 533 U.S. 289 (2001)	24
22.	James T. Gilmore v. Parametric Technology corp. employer 2063, Sox – 1 (ALJ Feb.6, 2003).	8
23.	Jeffries v. Wood, 114 F. 3d 1495, 114 F. 3d 1484, 149 4 –99 (9th circ).	17
24.	John Gary Hardwick Jr. v. Singletary Jr. No. 97-2319, Sept. 4,1997.	3
25.	Justice of Boston Municipal Court v. Lydon, 466 U.S. 294, 306 (1984)	25
26.	Kaprel v. U.S.A.. 166 F.3 d, 175	15
27.	Keeting v. Hood 191 F.3d 1053, 1060	12
28.	Landgraf v. U.S.A. 511 U.S. 244, 265 (1994)	12,17
29.	Levonfield v. Phelps, 484 U.S. 231 (1988).	6
30.	Lindh v. Murphy, 521 U.S. 320 (1997).	3,8,12,16,17,18,23
31.	Lanchor v. Thomas, 517 U.S. 314,326-27(1996)	24
32.	Martin v. Bissonette, 118 F.3d 871,.875 (1st circ. 1997).	4
33.	Mayers 175 F. 3d 1302 –03	17
34.	McDaniel v. Slack 529 U.S. 439,483 (2000).	4,5,6,8,9,16,18,23

page
35. McFarland v. Scott, 512 U.S. 849, 862(1994) 8, 23
36. Pak 1999 WL 791660, at 8 17
37. People v. Chennault, 2411 F 2d 188, 181, N.E. 2d 74 (1962) 22
38. People v. Gomitz, 58 Cal.App.4th 1309 (Cal.Ct.App.1997) 10
39. People v. Castanida, 37 Cal.App.4th 1612,1618 (Cal.Ct. App. (1995) 11
40. People v. Sandoval 161 F. 3d 241 11,17
41. Stevens v. Martinez – Villareals, 523 U.S. 637(1998) Breyer J's strong dissent. 6
42. Strickland v. Washington, 466 U.S. 6686 (1984) 6
43. Swain v. Presley, 430 U.S. 372, 381(1972) 23
44. Semteck Inter. Inc.v. Lockhead Martin Corp. 121 S.Ct.1021 (2000). 2
45. Teague v. Lane, 489 U.S. 288(1989). 15
46. Texas perjury case (June 2003) 21
47. Tinker v. Moore, 225 F.3d 1331 (11th cir.2001) 24
48. U.S. v. Brown117 F. 3d 471,479 2.7 (11th circ. 1997) 4
49. U. S. v. Helper, 490 U.S. 435, 440 (1989) 25
50. U. S.v.McAffee, 8 F.3d 1010, 1014 (5th cir.1993) 20

TABLE OF STATUTES, CONSTITUTIONAL LAWS & RULES

A. STATUTES. **Page**
1. 28 U.S.C. sect. 1254 (1) 1
2. 28 U.S.C. sect 2244 (b) (3) (D) 2
3. 28 U.S.C. sect 1254 (1) (2) 1
4. 28 U.S.C. sect. 2241 1
5. 28 U.S.C. sect. 2253 (c) 4
6. 28 U.S.C. sect.2244 (d) (1) (2) (D) 4
7. 28 U.S.C. sect. 2255 4, 15
8. 28 U.S.C. sect. 2244 (d) (2) 9, 12, 27
9. 28 U.S.C. sect. 1291 12
10. 28 U.S.C. sect. 2244 (d) 12, 24, 27
11. 28 U.S.C. sect. 2264, 110 stat. 1223 13
12. 28 U.S.C. sect. 2244 (d) (1) 3 (B) 16
13. 28 U.S.C. sect. 2244 22
14. 28 U.S.C. sect. 2244 (d) (1) 23
15. 28 U.S.C. sect. 2244 (b) (3) (6) 24
16. Statute of AEDPA 2
17. Statute of AEDPA, Chapter 153 9
18. Statute of AEDPA, Title I 17
19. Statute of AEDPA, Title IV 1720
20. California Penal Code 26

B. CONSTITUITIONAL RIGHTS

		page
1.	Due process clause of Constitutional Right.	2, 10, 23
2.	Sixth Amendment of Constitutional Right.	
	(a.). Effective assistance of counsel.	6
	(b) Speedy trial	6
	(c) Compulsory process of obtaining witness in support	6
	(d) Right of confrontation	7
	(e) Right to counsel	19, 23
3.	First Amendment of Constitutional Right: Freedom of Speech	7
4.	Congressional intent in enactment of Statute of AEDPA.	8,13,15,16,17,18,23
5.	Fifth Amendment of Constitutional Right	
	(a) Equal protection clause	14,29
	(b) Ex Post Facto Clause	22
	(c) Against self incrimination	21
	(d) Double jeopardy	25
6.	Eighth Amendment of Constitutional Right	14
7.	The Great Writ of Habeas Corpus Act.	16,23,24,28
8.	Civil Right to Freedom.	23
9.	U. S. Constitutional Right,	
	(a) Article I, sect. 9, cl. 2: Suspension Clause	23
	(b) Article I, sect. 9,cl. 3	13
	(c) Article I, sect. 9, cl.10	13

C. FEDERAL RULES OF CIVIL PROCEDURE

1.	F.R.C.P. 3	9
2.	F.R.C.P. 15 (c)	15

D. OTHER MISCELLENEOUS RULES

1.	Mistrial	6,7,19,20,21
2.	JNOV	6,7,19,20,21
3.	HIMA	8
4.	F.D.A.	8
5.	Rule of Detrimental Reliance	16,18,21
6.	Professional Rule of Ethics for attorneys 3.3 (a) (3).	21
7.	Rule of Perjury	20,21
8.	CJF Aug.1992	23

PETITION FOR WRIT OF CERTIORARI THROUGH THE UNITED STATES SUPREME COURT TO THE NINTH CIRCUIT COURT OF APPEALS.

The petitioners, Jijibhoy J. Patel, M.D. and Mrs. Silloo J. Patel, B.A., respectfully prays that a writ of certiorari be issued to reconsider an order of the Ninth Circuit Court of Appeals En Banc and review the 1992 U.S. Eastern District court's trial if it meets the standard of fundamental justice and Constitutional rights for possible reversal.

OPINIONS BELOW.

Opinions of Ninth Circuit Court of Appeals En Banc and other Ninth Circuit orders have been issued and it appears in the Appendix B, C, E, I to follow the contents of the case, also the opinions of U.S. Eastern District Court orders included in the Appendix D,F,G and H.

JURISDICTION OF U.S. SUPREME COURT

The U.S. Supreme Court has jurisdiction to hear this appeal and grant certiorari based on the statute 28 U.S.C. sect. 1254 (1) and (2) and 28 U.S.C. sect.2241.The petitioners recognized that issuance of the writ is not a matter of right but of U. S. Supreme Court discretion. However, to justify the granting of the writ, the petitioners have shown that the writ will be in aid of the court's appellate jurisdiction, that exceptional circumstances in this case, where the justice has been miscarried, warrant the exercise of this court's discretionary powers and that adequate relief cannot be obtained in any other form from any other court at this time.

INTRODUCTION

Patels were indicted in 1990 on the charges of attempted tax evasion and due to their ineffective assistance of their counsels, prosecutors' misconduct, jurors' misconduct and judicial errors, were convicted on two counts for attempted tax evasion of 1983 and 1984 1040 returns in March 1992, (against the speedy trial constitutional right) and each sentenced incarceration for six months and thereafter both completed five years of probation. They declined to accept pre trial bargain guilty plea by Mrs. Patel, thereby Dr. Patel would have been set free. The Patels promptly filed habeas petition in January 1993 but was dismissed **without prejudice**, as their direct appeal was pending. Patels then hired a specialist habeas appeal counsel. The counsel (Mr. Robert Berg) completed the direct appeal, which was declined. Mr. Robert Berg continued working on the habeas appeal after asking for $ 2,000.00 for the job and upon inquiry in 1993, advised Patels correctly that there was no statute of limitation for habeas appeal. Later, the counsel advised that the Patels should file habeas appeal before their probation is over. The counsel failed to reopen the 1993 case until 1998 despite of continuous urging by the petitioners. (Please see Appendix.

A).Due to these very unusual and extremely difficult circumstances of the counsel not filing the habeas petition to reopen the 1993 habeas petition because Patels could not pay him any more because of being in Bankruptcy that was involuntarily closed by the trustee, and they filed themselves in September 1998, before the end of Dr. Patel's probation as was advised by his habeas counsel. Because Mrs. Patel's probation was then over, therefore Patels also requested for "equitable tolling". There were **"extreme unusual circumstances"** as above. Also by then Dr. Patel most **"diligently"** continued efforts to seek justice and therefore attended Oakland College of Law for four years (night college). This diligence plus the extreme unusual circumstances of the Patels' involuntary dissolution of Bankruptcy of their corporation and complete closing down of their office, one day prior to Dr. Patel's coming out of the incarceration, causing extreme financial restraints and the habeas counsel procrastinating for five years ought to qualify by the two prongs required for the equitable estoppel tolling of the statute of limitation if at all post AEDPA applies in the present case at issue

Lower Eastern District court of California prejudicially time barred Patels Sua Sponte against their Constitutional rights, when they filed habeas appeal in September 1998 to reopen their January 1993 habeas petition. At this time, the U. S. Eastern District Court did not mention AEDPA. Patels are naturalized U.S. citizens, having U.S. Constitutional rights to have a notice and an opportunity to defend themselves. Therefore, the Eastern District court of California abridged their U.S. Constitutional rights. Patels appealed to the Ninth Circuit Court of Appeals and they were granted certificate of appealability (COA), but approximately after a year, instead of required three months within which time the appellate circuit is required to issue the certificate of appealability or give them their response one way or the other, pursuant to the statute 28 U.S.C. 2244 (b)(3)(D).

The Ninth Circuit Court of Appeals "reversed and remanded", correctly to grant them their due process Constitutional rights. However, the Eastern District court without requiring the appellants' appearance in the court, once again time barred, now applying AEDPA, that the appellants should have filed by April 23, 1997, but gave the Patels Certiorari to the Ninth Circuit Court of Appeals. Patels argued in the Ninth Circuit Court of Appeals that pre AEDPA should apply to their case and 1998 habeas petition was merely a continuation of their 1993 habeas appeal that was dismissed "without prejudice" i.e. to come back later to the same court, with the same claim (Please see Semtek International Inc. v. Lockhead Martin Corp., 121 S. Ct. 1021 (2001). The Ninth Circuit court of Appeal dismissed the well-established meaning of "without prejudice" and held in their argument that it does not mean after one year and five months delay.

Reasons for granting the writ.

Issue # 1

Patels' 1998 habeas appeal in actuality is a continuation of duly filed 1993 habeas appeal and therefore it is "*a pending case*".

The Ninth Circuit Court of Appeals declined to accept the well-known meaning of dismissed **"without prejudice"**. The legal meaning of dismissed without prejudice is that one is dismissed without adjudication of the merits of the case and therefore one would come back at "any time" for the same claim to the same court for adjudication. Before the enactment of AEDPA on April 24, 1996, the habeas appeal had no statute of limitation, per the great writ of Habeas Corpus Act, for more than 200 years (emphasis added). Patels had duly filed the habeas petition in January1993, three years and three months before enactment of AEDPA and that habeas appeal remained un adjudicated on merit but remained in full force as it was **dismissed without prejudice,** pursuant to the authority of Semtek (citation omitted vide supra), thereby the Patels' case on habeas appeal remained ***pending*** to be adjudicated on the merits of their Constitutional rights abridgement anytime in future.

Therefore, the Ninth Circuit Court of Appeals erred in deciding that Patels' 1993 habeas appeal was properly and completely dismissed, whereas in reality it was only dismissed **"without prejudice"**(emphasis added).

The Ninth Circuit Court of Appeals also erred on their reliance on Henry v Lungren and Green v. White (Please see in the Government's arguments). These cases were dismissed because of non-exhaustion clause meaning thereby that they failed to exhaust State claims and therefore they were properly dismissed. Here, the Patels' case is totally distinguished from those cases because the Patels' case is not a State case and not a matter of non-exhaustion of State claims but in reality it was case where constitutional rights abridgement was not adjudicated and did not require exhaustion of any State's remedy. Therefore, the Ninth Circuit Court of Appeals applied wrong cases and wrong reasoning for denying Patels 2255 habeas petition, **a great writ,** the forefathers meant to achieve justice when it is miscarried as it is here in the Patels' case.

U.S. Supreme Court has overturned other circuits ruling when they apply AEDPA **retroactively**, even though the habeas petition was filed before enactment of AEDPA (April 24, 1996). As in John Gary Hardwick Jr. v. Harry K. Singletary, Jr. Sec. Florida Dept. of correction No.97-2319, Sept. 4,1997, were decided on the authority of Lindh v. Murphy,521U.S.320 (1997). Hunter v. U.S.A., 101 F. 3d 1565 (11th Circ.1996), U.S. 117 S. ct.

1695, 137 L. Ed. 2d 822 (1997) overturned based on Lindh v. Murphy (1997) abrogating the circuit court's decision, the U. S. Supreme Court stating that AEDPA does not apply retroactively to the habeas petition filed before the enactment of AEDPA.(April 24, 1996). Also see U.S. v. Brown 117 F 3d 471, 479 n.7 (11th circ. 1997), and see 28 U.S.C. sect 2253© (supp.1997). Also, please see Martin v. Bissonette, 118 F. 3d 871,875 (1st circ. 1997), Green v. Johnson, 116 F. 3d 1115,1119 (5th cir.1997). There are plethora of cases wherein different circuits have been overturned where the lower courts applied AEDPA retroactively to the cases that filed habeas pre- AEDPA. Here, in Patels' case AEDPA was applied retroactively to continue the injustice and the justice that had been terribly miscarried. U. S. Eastern District Court applied AEDPA retroactively to their case despite of all the Circuit Courts of Appeals' decisions based on Lindh v. Murphy (1997), the landmark case that preserved the very basis of U. S. justice system. The Ninth Circuit Court of Appeals also erred affirming the above wrong decision. Therefore Patels pray to the Supreme court to overturn the Ninth Circuit court's decision that has applied AEDPA retroactively to pending 1993 habeas petition.

28 U.S.C sect 2244 (d)(1)(2)(D) proclaims that the date on which the factual predicate of the claims presented could have been discovered through the exercise of diligence. The "finality" of the above is not defined in sect 2255 but a criminal case becomes final for a collateral review (here by a habeas petition, a collateral review per law dictionary by Barren). It is considered final when,

(a) judgment of conviction is rendered.
(b) the availability of an appeal (here habeas) is exhausted.
© the time for certiorari has elapsed or denied or given.

Here, (b) and (c) above are applicable as the habeas appeal of 1993, which was reopened in 1998 are not exhausted by any means (emphasis added) because no constitutional grounds viz. inefficient counsel's assistance and more, as outlined in January 1993 and September 1998 habeas petitions. It has remained un adjudicated as the 1993 habeas appeal was first dismissed **"without prejudice"** and in 1998 was dismissed Sua Sponte without giving the petitioners their due process right of either notice or an opportunity to defend themselves. When the Ninth Circuit Court of Appeals reversed and remanded, the Eastern District Court again claimed it as time barred, now on the basis of AEDPA, ignoring January1993 habeas petition and ignoring U.S. Supreme Court in **Lindh v. Murphy (1997) and Slack v. McDaniel (2000).** The Ninth Circuit Court of Appeals En Banc affirmed the Eastern District court of California's ruling once again applying AEDPA wrongfully as well as against their own opinion of the past [Please see INS v. Megano – Pizzano, 119 S. Ct. 1137 (1999), where

the U. S. Supreme Court affirmed the Ninth Circuit Court of Appeals which reversed the lower U. S. District Court].

Therefore Patels have filed this appeal to the U. S. Supreme Court to grant the certiorari to the Ninth Circuit Court of Appeals within 90 days time frame.

It may be noted that the Ninth Circuit Court of Appeals En Banc did not even vote on the matter but still decided En Banc against the petitioners Patels. Whereas, it is to their discretion, still it is a moot point how the justices elect on their decision without voting!

In Duncan, Superintendent, Great Meadow Correctional facility v. Walter No.00-121 (2001), Breyer J. in his dissent guides the majority of U. S. Supreme Court Justices as to "not to be blinded in the alleys, but be illuminated in the very purpose of U.S. Supreme court's purpose is to deliver justice (emphasis added), so that not to have unfortunate results" for the petitioners who have lived by the law's light in the hope of finding justice, at least in the end as a final hope. (Also see Eric Cornell Clay v. U.S.A. No.01 – 1500 (2002) statute of limitation for collateral relief runs from the time when a motion was initially filed (herein January 1993) in the court, but impeded by the Government in violation of U.S. Constitutional laws. Here the petitioners had followed the law and being law abiding U. S. citizens, even underwent incarceration, underwent law studies of JD for four years in night college just to find if the law exists in U.S.A., and how to get exonerated and clear their names that had been smudged though the injustice they had received in 1992 through U.S. Eastern District Court's wrongful decision and have been now perpetuated by the Ninth Circuit Court of Appeals to carry on the injustice to the Patels.

In Slack v. Daniel, 529 U.S. 439, 483 (2000), U.S. Supreme court allowed Slack to expand his record by granting his habeas appeal, applying pre AEDPA laws, where no statute of limitation applies. Here, the petitioners Patels pray to the U. S. Supreme Court to allow them similarly to expand their records, now obtained from the Government's key witness, Mr. Larry Gray through his affidavit to follow in the Appendix of Amicus Curae. Therefore, the petitioners Patels aver that no fact finder can ever find them guilty in light of new evidence, and he is even willing to testify to that effect in future in the court, once he has now found out the truth that Patels' counsels rendered ineffective counseling, he asserted that in front of a respected attorney, viz. Mr. Jim Langford, the author of Amicus Curae, to follow, in support of the petitioners.

Stevens v. Martinez – Villareds, 523 U.S. 637 (1998) is a case, which has a very strong dissen of Breyer J. re AEDPA's "statutory ambiguities failed to give the petitioners a chance to his habeas petition"(so great a writ) considering it as a second or successive petition by procedural bar and preventing the defendant his opportunity to defend himself (by his due process right), through his habeas petition". Therefore, U.S. Supreme Court, later in another landmark decision of Slack v. McDaniel (2000) granted the petitioners an opportunity to be heard through his habeas appeal "to prevent a trap for the unwary pro se defendant", so that he may exhaust his claim. By analogy, the petitioners Patels pray most earnestly to the U. S. Supreme Court to grant a just process so that the unwary pro se Patels may exhaust their Constitutional claims which be not barred by the procedural bar. That is whenever "a judgment is infected with a Constitutional error", then the U.S. Supreme Court's independent judgment must prevail in the good name of U.S. justice. Anthony Siers v. Weber (1997) aligned the justice system with the U.S. Constitutional Sixth Amendment of Constitutional rights to an effective assistance of counsel as had been clearly established Federal standard in Strickland v. Washington, 466 U.S. 668, 104 S ct. 2052, so L.Ed 674 (1984).

Moreover, 1983 and 1984 IRS tax returns (1040) matter was adjudicated in 1992 after indictment in 1990. This is against a right to speedy trial requirement per the Sixth Amendment of Constitutional right, also a right to have a compulsory process for obtaining witnesses in their favor was also abridged by their litigating counsels by not calling even one character witness out of 150 laudatory letters that were in support of Patels in the hands of the counsels. This was also an abridgement of the Sixth Amendment Constitutional right.

Litigating attorneys failed to bring in the **total circumstances** of the petitioner's case nor the judge during the sentencing phase heeded the petitioners who tried to describe the whole case, by announcing at least a mistrial if not JNOV. Lovenfield V. Phelps, 484 U.S. 231 (1998) stated that it is a reversible error when the court fails to consider **totality of circumstances**. Here in the present case for Patels, the litigating attorneys short chained the Patels by neither presenting the total circumstances nor proving that there was not a second set of books by bringing in the Bank manager, Mr. Ron Brown of Great American First Bank, who had agreed to come to testify but for his dismissal by Mr. Dale Drozd at the last minute in pre trial conference, when the same counsel dismissed the three expert witnesses (CPAs of the Patels' Mrs. Marge Breezee of Stockton, California; Mr. Samuel Ramos of San Mateo, California , ex IRS officer, and Mr. Robert Mann of San Francisco, California, the latter gave a green flag to proceed with the case when he took a moot trial in front of his own

counsel). The counsel, Mr. Drozd assured the Patels that their own CPAs will replace the CPAs, but it never happened. In actuality, there was no "intent" or mens rea, but for the Government wrongfully proving the mens rea by the double set of books in absence of Mr. Ron Brown as the Patels' crucial witness! Of note, Mr. Dale Drozd became the Magistrate of the same U. S. Eastern District Court soon after the Patels' case!

Notwithstanding the above, the petitioners were prevented to give total circumstances (gag order against their First Amendment of the Constitutional right of free speech), as to their good character and their good benevolent works, by their litigating counsels' own deal with the prosecutors without Patels' consent, i.e. probably the Patels to accept the plea bargain or the prosecutors will bring in the Medicare civil case The prosecutors tried to bring that in anyways but overruled by the Judge for the civil settlement the Patels had with Medicare. As soon as Patels mentioned something good about them, " that Mrs. Patel comes from a good family", prosecutor's objection was granted and the Patels were gagged thereafter, so the total circumstances never came out as to the Patels' goodness in carrying out free medical clinics, giving dollar amount for medications to the poor patients and giving loan and food to the poor patients. Prosecutors probably knowing or should have known through the litigating attorneys but never mentioned this facts to the jurors or to the Judge. Nor did they mention that the petitioners were Bankrupt instead of being millionaires if they were the cheaters. Dr. Patel narrated as much as he could to the Judge at the time of sentencing but was ordered not to be transcribed as suddenly the transcriber could not understand Patels' accents, though were O.K. during the whole case! At least tape recording could have been allowed for the record to be complete at least for the Appellate Court to review the total circumstances or later transcribed by another transcriptionist who would understand Indian accents after being tape recorded. Then not to have total circumstances considered, the jurors were prevented to decide on the case as a whole! This is a reversible error per Lovenfield (supra) (citation omitted). On this basis, the judge after hearing Patels ought to have granted at least a mistrial if not JNOV, the discretional authority vested on to the Judge by the Congress, even if the Patels' counsels failed to call out for mistrial.

Moreover, the Patels' litigating counsels failed to call the whistle blower Mrs. Camille Green to the witness stand to confront her in contravention of petitioner's Sixth Amendment Constitutional right of confrontation (380 U.S. 400; 272 U.S. 542). This is in line of Strickland "prejudice test" by applying unreasonable and improbable standard. See Strickland v. Washington (citation omitted). The Patels have been prejudiced throughout their case at the U. S. Eastern District court level at multiple steps.

The landmark case of Lindh v. Murphy (1997) and Landgraf v. U. S.A., 511 U.S. 244, 265 (1994) were the bases of discussion in James T. Gilmore v. Parametric technology Corp. employer 2063 – sox – 1 (ALJ Feb 6, 2003) stating that the question of pending appeal versus successive or second appeal be based on proscription of retroactive application of AEDPA as it should not be against **Congressional intent** (emphasis added). In HIMA, where it is stated that retroactive application of any statute by FDA is considered illegal. The legal presumption against retroactive application of law is strong and is prohibited by law (See in conclusion of HIMA) and that is a clearly established federal law as determined by U.S. Supreme Court in Lindh and Slack, (citation omitted) (emphasis added).

Patel's habeas petition of September 1998 was reopening of the pending case of January 1993.

The former petition of January 1993 was dismissed without prejudice i.e. to come back later at an appropriate time which was after the pending direct appeal was over. This could not be done expeditiously as much as Patels' desired, due to the constraint imposed upon them by their economical status just after coming out of incarceration and U. S. Bankruptcy trustee closing their incorporation of medical business involuntarily, one day before Dr. Patels' release from incarceration. Moreover, his habeas appeal counsel, Mr. Robert Berg delayed and procrastinated till almost end of Dr. Patel's probation. Had that original Habeas appeal was dismissed with prejudice, and then filing it again in 1998, would have been second or successive appeal. Here that was not the case (i.e., January 1993 original appeal was dismissed without prejudice, inviting Patels to the same court for the same claim). Therefore 1998 habeas petition was merely asking the same court for the same claim in reopening the initial 1993 habeas appeal. Therefore the Ninth Circuit Court of Appeals had misapplied AEDPA's statute of limitation of one year inappropriately to the present case at issue.

In McFarland 512 U.S. 849, McFarland had a "stay " for not getting a counsel. Patels' case is on all fours as far as not getting counsel for themselves by U.S. Eastern District court of California as well as by the Ninth Circuit when they filed their appeal pro se.

Patels' 1998 habeas petition is a pending case from 1993 habeas petition and not a second or successive petition.

McFarland v. Scott, 512 U.S. 849, 862 (1994) states that the provision of pre AEDPA, governing habeas petition indicates that a case becomes a

pending case that is created by the filing of the first habeas corpus petition if filed prior to enactment of AEDPA (April 24, 1996). The petitioners did file their first habeas petition in January 1993 and the case was created as a pending case since it was not adjudicated but was dismissed without prejudice, correctly as the direct appeal was then pending. Therefore the Patels came back to the same court by invitation, by the very order of dismissal "without prejudice" for the same claim. Therefore, pre AEDPA rule ought to govern the case, so that the multiple constitutional rights abridgement can be adjudicated. Therefore, the Patels pray to the U.S. Supreme Court to grant them the certiorari. Therefore, Patels' 1998 habeas petition was a **" pending"** habeas appeal of January 1993.

Plain meaning of "pending" is defined in FRCP 3 and it is in concordance to habeas petition, chapter 153 i.e. "an action is commenced when a complaint is filed in the court. Here in the Patels' case habeas petition was filed in January 1993 in the U. S. Eastern District Court of California, therefore, the action commenced in January 1993 and remained pending until reopened in September 1998, which is considered as "pending" in direct context with FRCP 3 and habeas chapter 153.

Gap or delay in filing by the Patels' in reopening their 1998 petition be considered as pending

Carey v. Saffold, 536 U.S. 214, 122 S. Ct. 2134, 2138 (2002) stated as a law of the land pronounced by U.S. Supreme Court that "pending" is in context of statute of limitation per 28 U.S.C. sect. 2244 (d) (2) stating that the gaps be included, if were not on file for a period of time and that be considered as a pending case. The same principle was also applied in Slack v. McDaniel 529 U.S. 473 (2000). Therefore, the gap or delay of 1 year and 5 months for 1998 petition after the initial petition of 1993 be considered as "pending" case and not as second or successive petition as it was not an abuse in delay for postponing any part of the sentencing that was already completed. (vide supra).

Ninth Circuit Court of Appeals erred in the Patels' case by going against their own decision :

In INS v. Magano – Pizzano, 119 S. Ct.1137 (1999) the Ninth Circuit Court of Appeals in reversing the denia l of habeas appeal decided by District Court of California, stating that IRRIRA (analogy of AEDPA) did not repeal 28 U.S.C. 2241 and granted the Magano – Pizzano the habeas petition in U.S. immigration. The U. S. Supreme Court affirmed the above. Therefore, the petitioners Patels pray to grant them certiorari to find justice. The Magano – Pizzano's case is on all fours with the Patels' case.

The Ninth Circuit Court of Appeals erred in dismissing January 1993 habeas petition on their own accord!

The Ninth Circuit Court of Appeals erred in dismissing the petitioners' initial habeas petition of January 1993. The petitioners' initial habeas appeal counsels Mr [illegible]mpson and Mr. Gigounas of San Francisco, California made this p[illegible]ition. (Please see Appendix I). The Ninth Circuit Court of Appeals surprisingly misconstrued this as "Appellants' motion is construed in part as a motion to dismiss voluntarily this appeal. So construed, the motion is dismissed", by the Honorable Circuit Judges Browning, Tang and Norris! This was served to the counsels a month later on August 17, 1993.

Which defendants on earth especially if innocent, would want their motion of appeal dismissed **voluntarily?**

What authority the judges have to dismiss their habeas petition of their own accord just in six months time after the initial habeas appeal on January 1993, especially when the defendant Dr. Patel is incarcerated during that time? There was "no notice or an opportunity to defend" in total contravention of the petitioners' **due process Constitutional Rights.** Then to call the petitioners' habeas appeal petition of September 1998 as second or successive and time barred by application of AEDPA is totally outside of the fundamental just judiciary system.

Therefore, the Ninth Circuit Court of Appeals has erred by misconstruction of the initial habeas petition appeal and by dismissing it on their own accord. Therefore, the petitioners Patels pray to the U. S. Supreme Court to consider their September1998 habeas petition as a continuum of their January 1993 habeas petition that had remained **pending** by the Honorable Judge Schubb's reiteration to the prosecutor to place in the order during the end of oral argument during January 1993 habeas petition to order it as "without prejudice". Please see the transcript of oral argument of January 1993 in Appendix J.

The Judge and the litigating counsels should have advised the petitioners of the adverse consequences of rejecting the plea bargain. California penal code 1016.5 (c) (West 1999) provides that the trial judge is required to give a statutory warning concerning possible adverse (immigration) consequences before taking a plea. The State requires that a defendant be warned. the possibility of exclusion from admission to the U. S. A. or denial of naturalization. **A showing of non- compliance with the statute compels a vacation of judgment absent proper advisement.** People v. Gomitz, 58 Cal. App. 4th 1309 (Cal. Ct. App. 1997). **A motion to vacate the judgment is recognized equivalent to a petition for a great**

writ ..... People v. Castanida, 37 Cal. App. 4th 1612, 1618 (Cal. Ct. App. 1995).

Writs of Habeas Corpus for failure of defense counsel to advise of adverse immigration consequences. A successful writ of Habeas Corpus will eliminate the effects of criminal conviction in immigration proceedings. A writ of Habeas Corpus may be based on ineffective assistance of a counsel as is in the case of the Patels. To succeed a defendant must show that:
(1). Counsel failed to adequately research and advise the defendant of the adverse consequences of a plea bargain. This is what happened in the present case why Mrs. Patel rejected the guilty plea.
(2). Petitioner was prejudiced, namely the petitioner would have pleaded differently. In the present case, if the Patels knew of the adverse consequences of not accepting the plea bargain, they would be adversely placed with IRS (vide infra), the Patels would have accepted the plea bargain.
The relevant factors for this include:
(a). The defendants' response to the warning of the adverse circumstances given by the judge. Here, the Patels were given no such admonishment.
(b). The defendants' criminal history and sophistication or naivete with respect to the judicial process. The Patels did not have any criminal history prior to the present case at issue and they were quite naïve with the judicial process.
(c). Availability of the arguable defense. The Patels have tremendous defense by presenting the total circumstances that were obviated in their case by their litigating counsels.
(d). The defendants ties to the U.S. Here the Patels have stayed for 28 years by 1992, the year of the trial and 39 years to present. Moreover, Dr. Patel served voluntarily in the U. S. Army Active Duty as Major and later as a Lieutenant Colonel. Therefore, the Patels have tremendous ties to U. S.
(e). The defendants' knowledge and reason to believe that the risk of re conviction is considerably less with the passage of time. Dr. Patel studied law to understand the legalities and with that knowledge it is reasonable to believe that there will not be any re conviction. See People v. Sandoval 161 F.3d 241.

Here the Patels' Federal case, contrary to the above California State matter is quite applicable in the matter of rejecting the plea bargain which is of mammoth significance as far as the over crowding and clogging of the U.S. court system is concerned. If a similar warning be given for adverse consequences in not taking the plea-bargain fairly large number of defendants will indeed take the plea bargain and necessarily will decrease the court's tremendous caseloads.

Therefore, the petitioners Patels have presented this point of view to the U. S. Supreme Court in making a new law of the land in making the counsels and the Judge mandatory to advise the adverse consequences in not taking the plea bargain as well. This will only aid in decreasing the load of the U. S. court system. The sentences of the immigration law is vacated on the above account and the petitioners Patels therefore pray to the U. S. Supreme Court to reverse or reverse and remand their case by making a new law of the land.

The Ninth Circuit Court of Appeals erred in deciding for Mrs. Silloo Patel out of District court's jurisdiction.

Whereas Silloo Patel had completed five years of probation she was actually incarcerated when January 1993 habeas appeal was first duly filed. Since that appeal was not adjudicated being dismissed without prejudice, and therefore when the appeal was reopened in September 1998, the same habeas appeal that had remained pending, then for all practical purposes, she retains the custody requirement pursuant to Keeting v. Hand 191 F.3d 1053, 1060 (9th Cir.1999). Therefore, she as much retains the jurisdiction for the adjudication of her Constitutional rights abridgement. The Government argued against her jurisdiction because she was out of probation. The Ninth Circuit Court of Appeals wrongfully supported her oral argument. Moreover, 28 U.S.C.A. sect. 1291 vests the courts of appeals with appellate jurisdiction over all District courts' decisions. Also see the Ninth Circuit Court of Appeals' decision in Blazak v. Ricketts, 971 F. 2d 1408, 1410(9th cir.1992) per Curium. (Please see 9th circ. order in reversal and remanding in support of the petitioners' due process constitutional rights) (Please see Appendix E).

Issue # 2 :

Pre AEDPA law governs the Patels' case and AEDPA's statute of limitation is not applicable to the Patel's case.

AEDPA Anti terrorism effectiveness death penalty Act of April 24, 1996 was enacted to end ever repetitive and abusively successive habeas appeals by "the violent actors" to evade the death sentencing, coded in 28 U.S.C.A. sect 225[illegible]d). Justice Souter proclaimed the law of the land in a landmark case of Lindh v Murphy (1997) that the statute of limitation imposed by AEDPA does not govern non capital cases, that were already pending before the enactment of AEDPA and granted the writ of Certiorari to the Seventh Circuit Court of Appeals. The Ninth Circuit Court of Appeals here in the Patels' case refused in contradiction with Lindh v. Murphy (1997), the U.S. Supreme Court case. The U. S. Supreme Court also delineated "the Congressional intent" in Landgraf v. U.S.A.,511 U.S.244,265 (1994). that the AEDPA be not applied retroactively for the pre AEDPA pending cases(emphasis added). Here, in the present case of Patels at issue, AEDPA

was applied retroactively by the Ninth Circuit Court of Appeals to the pending case dismissal "without prejudice" and affirmed the error of the lower court of U. S. Eastern District of California, calling it "time barred". U.S. Supreme court furthered the congressional intent in Landgraf (citation omitted) that congress has assured affirmatively the potential unfairness in just adjudication if AEDPA is applied retroactively.

Scalia J. id at 286 stated in his concurrence that "finding no clear evidence of congressional intent to rebut presumption against statutory retroactivity, a legislative enactment (of AEDPA) affecting substantive rights be not applied retroactively, absent clear statement to the contrary" (emphasis added). Moreover, the U.S. Supreme Court furthered that the statute goes beyond the "mere" procedure (bar) to affect the substantive entitlement to relief. Also see 28 U.S.C.A. sect 2264 (b) (supp. 1997) 110 stat.1223 of revised new legal standard to affect the relief (justice). Here in the Patels' case decision of the Ninth Circuit Court of Appeals, the Congressional intent was undermined by wrongfully applying procedural bar, when the substantive relief from the injustice by constitutional rights abridgement of ineffective counsel has been totally ignored.

Ex Post Facto Clause (Fifth Constitutional amendment right) :
It is a misnomer in that actually two Constitutional clauses are involved. The U.S. Constitution's Article I section 9, C.3 states: "No bill of Attainder or Ex Post Facto law shall be passed". However, the Congress did pass AEDPA without having scienter that it will back fire on to the non capital and non violent cases when the lower courts start applying AEDPA retroactively. The words and the intent of the Ex Post Facto Clause encompass every law that changes the punishment and inflicts a greater punishment, than the law annexed to the crime, when committed Calder v. Bull, 3 U.S. (1 Dall.) 386, 390 (1798) (opinion of Chase J.). An Ex Post Facto law passed after the occurrence of an event or action, which retrospectively changes the legal consequences of the event, or action.

In criminal cases, no statute or law that is enacted be applied to the cases that occurred before its enactment. As a matter of fact, the defendant will be considered innocent before such law, but is convicted after the law's enactment. This retroactive application of the law is in violation of U. S. Constitution, which provides that neither constitution nor any sovereign shall press such Ex post facto laws, as it is in violation of U.S. constitution contained in Act 1, sec 9, (cl.3) & 10. Here Patels' case occurred in 1992, filed habeas appeal in January 1993. When this was reopened in September 1998 without asking for the COA because it was continuation of 1993 case, when COA was not required in 1993. The Ninth Circuit Court of Appeals

gave the COA anyways and then called it a new or second or successive appeal, whereas it was merely reopening of the pending habeas appeal of January 1993. If it was a second, new or successive appeal, the petitioners would have asked for the COA. Therefore, the Ninth Circuit Court of Appeals erred in affirming the U.S. Eastern District Court's ruling in applying Ex Post Facto Clause in violation of the petitioner's Fifth Constitutional Amendment rights.

Eighth Amendment of cruel and unusual punishment clause:
Applying the AEDPA's statute of limitation of one year to foreclose review of an initial application for relief or justice in a case where a Colorable showing of factual innocence can be made violets the cruel and unusual punishment clause of the Eighth Amendment of the Constitutional Right. Here in the Patel's case, which has a colorable, showing of factual innocence if the AEDPA's statute of limitation will not foreclose the review of the initial application of January 1993 habeas petition be not foreclose or the U.S. Supreme Court reviews the whole case that occurred at District Court's level. Just on this basis the U. S. Supreme Court is prayed by the petitioners to reverse the whole case.

Equal protection clause :(Fourteenth and Fifth Amendment of U.S. Constitutional rights).
If terrorists (violent actors) get their justice by modifying AEDPA to apply retroactively, shouldn't non violent actors get their dues by not applying AEDPA retroactively as per the congressional intent that AEDPA be not applied to non – capital cases retroactively and as per the legal maxim that post facto clause approach is defecto in violation of the U.S. Constitution. If not, it is in violation of equal protection clause and not to give justice to innocent is in total violation of the very basis of the U. S. judic iary system. Here, the Patels are qualified as a descent from Indian nationality with a different race. Therefore, rational basis test where the U. S place Government action is in strict scrutiny. Supreme Court. See 394 U. S. 618, 634; 379 U.S. 184, 191.Therefore, the Federal Government has violated the petitioners' due process clause by the Equal protection clause of the Fifth Amendment. See 347 U. S. 497, 499; 55 N. C. L.Rev. 540 (1977).

In Abrams v. Johnson, No. 95 – 1425. June 1997. The higher court reversed the lower court ruling that the dismissal of a white teacher in order to protect a black teacher's job was a violation of federal civil right's law. Here in the Patels' case removal of the most of the minority jurors was a violation of the petitioners' federal civil right law.

Relating back to Rule FRCP 15 (c):
If a case arose out of the same conduct, transaction or occurrence as of a prior case, then it is considered relating back to the prior matter. Here in Patels' September1998 appeal is in the same conduct, transition and occurrence. Therefore, Patels' appeal of September1998 be related back to its January1993 appeal, which had remained pending, i.e. the case has not been adjudicated on its own merits but just procedurally barred specially when the January1993 habeas petition was dismissed "without prejudice". Pursuant to the authority of Semtek (citation omitted), the case can be brought back to the same court (Eastern District court) for the same claim (of ineffective counseling).

The present Patels' case is distinguished from Eric Cornell Clay v. U.S.A. (2002) because it did not arise from the same conduct, transaction or occurrence. Patels' case is quite contrary. Therefore their September1998 habeas appeal should **relate back** to January1993 pending habeas appeal.

Ninth Circuit Court of Appeals erred in applying AEDPA retroactively in Patels' case:
Under the retroactive analysis of **Teague v. Lane**, 489 U.S. 288 (1989) stated that judicial decisions that announce new rules of criminal procedures do not apply, where the conviction becomes final before the new rules are announced. This was announced by plurality opinion under Eric Cornell Clay v. U.S.A. (citation omitted) i.e. the new rule of AEDPA of 1996 be not applied to the habeas petition of September 1998, as it was in continuum of the first January1993 habeas petition.

It appeared that retroactive application of AEDPA was proscribed for the State convictions. However in Kaprel v. U.S.A., 166 F. 3d at 575 it was proclaimed that there is no principle reason to treat the State and the Federal prisoners differently. Therefore, the same rule ought to apply to the present Federal case of Patels in question i.e. not to apply AEDPA retroactively, as it was also pointed out in Kapral that it was not the Congressional intent of imposing time limits, where none exerted previously id at 511. Congress did not define finality in sect. 2255, in which petitioners had filed their habeas prior to AEDPA.

Eric Cornell v. U.S.A. (citation omitted) stated that a case is not finalized unless and until 90 days elapsed after the Circuit Court of Appeals decides. Here the Ninth Circuit Court of Appeals decided En Banc on April 14, 2003 (See Appendix B). The petitioners have up to July 12, 2003 to file the appeal to the U.S. Supreme Court within the guidelines. The petitioners have filed within that guideline. The petitioners now pray most earnestly to give justice that has been miscarried ever since 1992!

Patels had a good cause as required to over come AEDPA's statute of limitation.

28 U.S.C. sect 2244 (d) (1) 3 (B) requires a good cause for failure to file the habeas application within the one-year period of statute of limitation. Even if AEDPA were considered applicable to this case, the Patels had good cause where they're paid habeas attorney, Mr. Robert Berg of San Francisco, procrastinated for 5 years, constructively abandoning his clients. Moreover, he first advised that there was no statute of limitation and then advised that the habeas petition be applied before the probation is over, but never advised that the statute of limitation of AEDPA has been enacted on April 24, 1996. Moreover, he failed to file it before April 23, 1997. The Patels could not file any earlier detrimentally relying on their attorney **(Detrimental reliance).** (See Appendix A). Thereafter, the Patels applied in desperation in September 1998, before his probation was over as was previously advised by their counsel. The Patels pray that U. S. Supreme Court considers that as a good cause for the delay in their reopening of their case.

To enhance the will and the intent of Congress, U. S. Supreme Court rules on the merits of the petitioners' constitutional claims rather than short circuiting and denying the justice. See Lindh v. Murphy (1997) and Slack v. McDaniel (2000). Here, the Patels' case has been terribly miscarried in the lower court of Eastern District of California and in the Ninth Circuit Court of Appeals, without adjudicating Patels' constitutional rights. This amounts to defying of the Congressional intent in enacting AEDPA, which was not to render injustice especially to the pre AEDPA petitioners.

Therefore, the Patels pray and exhort the U. S. Supreme Court to grant justice by reversing the Ninth Circuit Court of Appeals' ruling, by giving certiorari to the Patels, who had originally filed the habeas petition in January 1993 and later reopened the pending habeas petition in September 1998 **in the same vein of the Congressional intent** for non – capital cases in enactment of AEDPA.. To do it otherwise is equivalent to eviscerating the U. S. judicial justice system, whose very basis is to deliver justice especially when it is miscarried. Moreover, that will amount to an insult to **the great writ of the Habeas Corpus Act**, which the congress did not intend in enactment of AEDPA

Application of Patels' 1998 petition as post AEDPA is at its best futile and totally irrelevant:

The main thwarting purposes of AEDPA is to further the principles of comity, finality and federalism as per Duncan v. Walker, 533 U.S. 167, 178

(2001) to eliminate the delay in execution of the state and the federal criminal sentences. Also see Scalia J. 's dissent in Hohn v. U.S.A., 524, U.S. 236, 264 (1998) Here in the Patel's case, both the petitioners had already completed six months of incarceration and five years of probation. Therefore, to apply that post AEDPA one year statute of limitation to the Patels' case does not meet its very purpose of AEDPA in eliminating the delay in the execution of the criminal sentence. Moreover, it does not meet the Congressional intent, whereas the U. S. Supreme Court is out to render justice especially when it is miscarried into the innocent U. S. citizens (the Patels).

Even the Ninth Circuit Court of Appeals had found it structurally dispositive of Congressional intent in Title I of AEDPA. See Jeffries v. Wood, 114 F. 3d 1495. Also 114 F 3d 1484, 1494 – 99 (9th cir.) The U. S. Supreme Court also reached a similar conclusion in Lindh v. Murphy (1997) and stated that "Nothing indeed but a different intent explains the different treatment" Id at 329. The fact remains that AEDPA was expressly made for involving terrorists (capital and violent actors' aggravated felony crimes) but not explicitly applicable to non- capital non violent actors (non aggravated felons) just by their criminal convictions. See Pak 1999 WL791660 at 8; Mayers 175 F 3d at 1302 – 03; Sandoval 161 F.3d at 241; Henderson, 157 F. 3d at 129 – 30, Gonclaves 144 F. 3d at 128 – 129. Here, Patels' case is certainly not of a terrorist but is of a U. S. Army Lieutenant Colonel (1978 – 1982), who got slipped through the rare cracks in the laws by the lower court wrongfully applying AEDPA in contrary to U.S. Congressional intent of not applying AEDPA to "non capital cases" that occurred pre AEDPA. (vide supra), especially here when the petitioners were already in the habeas court in January 1993.

Title I of AEDPA proscribes the application of AEDPA retrospectively when habeas petition is made before AEDPA's enactment. See Jeffries v. Wood (citation omitted), the Title I exercised with conclusion that based on the statutory structure and the history, the provisions of AEDPA could not be applied to habeas petitioners filed before AEDPA's effective date. Sect. 114 F. 3d 1484, 1494 – 99 (9th circ) & 118 S. ct. 586 (1997), A similar analysis applies to the Title IV of AEDPA, with a similar result. Likewise, the Patels' case is as much distinguished by having filed their habeas petition initially in January 1993, a distinct pre AEDPA era and then reapplied their "pending" habeas petition in September 1998. Then later to be called as second or successive petition is out of line with Title I and Title IV of AEDPA's statute, as was wrongfully applied by the Ninth Circuit Court of Appeals. Because it is a reasonable presumption, deeply rooted in U. S. Jurisprudence that a legislation be applied (only) prospectively and not retrospectively. See **Landgraff v. U.S.A.,** 11 U.S.

244, 265 (1994) (emphasis added). Therefore it is only reasonable to construct that the Congress enacted the AEDPA statutes for the proper temporal reach i.e. to apply AEDPA prospectively and not retroactively, especially so in the non-capital, non-violent cases. See **Lindh v Murphy (1997) and Slack v. McDaniel (2000).** Therefore. the petitioners most earnestly pray to the U.S. Supreme court to make the law of the land by giving deference to the U. S. citizens' constitutional rights (the petitioners), because the justice has been terribly miscarried by the lower courts and remedy that by giving certiorari to the petitioners, the Patels.

ISSUE # 3:

Showing of a good cause why the Patels' habeas of 1993 could not possibly be expediated by one year and five months.

Arguendo, Ninth Circuit claimed that the 1993 habeas appeal should have been expedited any sooner even though the period of years of the criminal act and the judgment of the U. S. Supreme Court in Lindh v. Murphy (1997) and McDaniel v. Slack (2000) were a decade or so away and as long as the initial habeas was filed before AEDPA, they were granted the required certiorari, and were reversed and remanded (emphasis added). Here the U. S. Supreme Court had proclaimed earlier as a law of the land that AEDPA could not be applied retroactively in non- capital cases. Here in Patels' case they intended for their habeas counsel to file it as early as he could. (See Appendix A) but was delayed by the "**detrimental reliance**" (vide supra). The Patels, for that matter anyone (except those who want to delay their death sentence) would want to be exonerated as early as one could apply the habeas petition in time. The Patels would want to stop IRS' continuous liens and levies which makes it impossible for them to progress in their medical business. They were already suffocated despite of the U.S. Bankruptcy chapter 7 involuntary discharge that was supposed to give them time to breath freely to have a fresh start. Moreover, they cannot even purchase a residence for themselves even at age 65 nor can buy any office equipments or a car (which presently has 279,000 + miles) due to IRS continuous liens.

Patels had already completed their sentencing requirements. They were hampered at work and at home as above by their continuous and multiple bankruptcies and involuntary dissolution of Patels' corporation which prevented their counsels from getting as much dollar amount that they were demanding, which Patels could not afford due to the extreme economical restraints at that time. For such extreme, unusual and extenuating circumstances, Dr. Patel in order to find justice even undertook studies for law (JD) for four years in night school to eventually apply by himself in

September 1998 in an absolute extreme desperation. The wrongful stain placed on his character (by the IRS case in 1992) which is as dear to him as life and death as far as the prestige and self respect is concerned, the petitioner, Dr. Patel has come as far as applying to the U. S. Supreme Court to clear his good name. Finally, Dr. Patel had found a colleague JD, who helped him out almost pro bono until now, from the later part of the appeal to the Ninth Circuit Court of Appeals.

Therefore, the Patels did not purposely delay the application like those violent felons at death row. Patels pray that their case be distinguished from those violent actors when in an instance a "terrorist" immigrant had AEDPA law applied retroactively and was deported. The Patels are U. S. citizens in very good standing with 150 laudatory letters, the trial judge commented giving deference to the Patels at the time of sentencing but without JNOV or mistrial. His counsels failed in calling even one witness for their character reference in their support in contravention of their Constitutional right (vide supra). Their character was on line and eventually, it was wrongfully destroyed, not only Dr. Patel's character but also his professional career (requiring forcible voluntary resignation) as well as his heart requiring five angioplasties (balloon procedures) and a heart attack (vide supra) due to the severe emotional stress he was placed under.

Therefore the Patels pray to distinguish their case and apply pre AEDPA ruling to their case requiring no statute of limitation for September 1998 petition as it was for January 1993 petition.

Litigating counsels' inefficient assistance:

1.Jurors' misconduct not objected by the litigating counsels:
Private detective for the Patels found out that one juror was in favor of the Patels and that could have brought a hung jury but for an another juror who brought out an extraneous material from the purse during the jury's deliberation phase and read aloud which changed everyone's mind. The same juror who was in Patels' favor, actually cried when the trial judge asked if she agreed to the final guilty verdict. It was obvious that the other jurors unjustly coerced her at the time of deliberation and the judge at the time, before announcing the jurors' verdict, when she finally acquiesced to the guilty verdict. See the dissent in the direct appeal who objected to this extraneous material that other jurors were not made to write like the one who did. But the counsel did not object to this or called for mistrial. Ineffective counsel The Judge accepted that juror's acquiescence.

2.Litigating counsels failed to call in an important witness.
The litigating counsels did not call one character witness (id), also dismissed the three important expert witnesses (three CPAs) who were in support of the Patels, in contravention of their **Constitutional Rights of calling in the supporting witnesses (id).** Moreover a very important witness, Mr. Thomas Matheowetz, who was the Patels' incorporation lawyer, who incorporated Patel's medical business without even meeting them failed to make the minutes of the Patels' taking the loan for the purchase of office building. Therefore, Mrs. Patel gave the lower amount as an income in personal 1040 of 1984, same as Mr. Blomberg, 1983 CPA erred in not reporting the original loan from Great American first Bank (manager Mr. Ron Brown) to start the medical business in January1983. This paper was misconstrued as a second set of books. The litigating counsels failed to call these two important witnesses namely Mr. Thomas Matheowetz and Mr. Ron Brown. The latter was even willing to come from Baton Rouge, Louisiana, as was arranged by the petitioner, Mrs. Patel; but was dismissed at the last minute at the pre trial conference by her counsel, Mr. Dale Drozd, who is now a Magistrate at the same venue as of the petitioners' case. Notwithstanding the above, the counsels failed to call Ms. Camille Green, who was the whistle blower (id) in contravention of their Constitutional Right of confrontation of the opposite side. This is raised at the present time in the habeas appeal because the direct appeal counsel failed to raise these important Constitutional issues.

3.The litigating counsels failed to object during voire dire of the mismatch of the group not as a peer group, nor a minority group as the Patels.
Here counsel did mention but later in the phase of the trial after the post voir dire phase. "Too late" as per the dissent of the direct appeal. (Please see the dissent in the direct appeal). On seeing the demeanor of the juror crying, instead of forcing her to answer, the judge ought to have declared mistrial or "hung jury" if not JNOV! The latter was a case of JNOV in actuality, because in this case, the IRS special agent (Government's expert witness) confessed of having perjured in the case while asking about the loan papers, which she claimed was part of the second set of books. This occurred outside of jurors' presence but in front of the judge. However, the trial attorney proved that it was a matter of a house loan in Berkeley, California. The trial lawyer did not object to it as a "mistrial" when a Government's special agent (IRS agent) perjured. Perjury Rule 18 U.S.C. 1623 (e) allows prosecutors for making two or more statements under oath that are inconsistent to the degree that one of them is false… The Government does not have to prove irreconcilably Contradictory declaration as false. Please see U.S. v. McAfee, 8 F 3d 1010, 1014 (5th cir.

1993). Rules of conduct 3.3 (a) (3); Candor towards the tribunal provides that "a lawyer shall not knowingly fail to disclose the tribunal" (including the jurors) " the legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by the opposing counsel". Here, in the Patels' case when the special IRS agent, Government's expert witness perjured, it was the counsel's duty to bring that to light of the tribunal in front of the jurors (emphasis added) at least in their closing arguments to bring about a just result for their clients.

4.The litigating counsels failed to bring in as effective evidentiary hearing as was done by the prosecutors .
The prosecutors brought in as the Government's evidence big demonstrative charts to the **surprise** of the petitioners (vide infra). The litigating counsels did not match by bringing in no such evidences to impress upon the jury to explain two different loans (id) for them to understand the confusion the prosecutors injected into the jurors by ignoring and not informing the fact finders about the two different loans namely, the first one from the Great American First Bank for starting the medical practice as of January 1983 and the second one from the corporation for the purchase of the office building in 1984 as was advised by their CPA, Mr. Blomberg who advised the Patels to incorporate their medical business through his referral to Mr. Matheowetz (id). Therefore, the petitioners hardly had an evidentiary hearing in their case. They also failed to bring in the evidence papers from the 150 laudatory letters in support of the petitioners.

5. The surprise element at the actual trial phase against FRE 404:
The prosecutors confronted the petitioners with the evidentiary papers that the Patels had never seen before the trial through their counsels. This included the Patels' corporation seal paper, their travel to India document, the loan paper of the office that had Dr. Patel's signature whereas he had not signed original papers of 1040 of 1984 return, and the other large billboard like IRS calculations evidentiary poster (vide supra). These made the Patels quite nervous and were not able to answer properly especially when the litigating counsels had admonished the Patels not to take the Fifth Amendment against self-incrimination or be dead ducks nor to speak any of their good character accounts

The Contemporary Authorities:
Most recently 13 prisoners were set free from Texas prison, when a detective was found to have perjured. (June 2003 case). If the counsels failed to give effective assistance but the judge could have declared it as mistrial if not JNOV when the Government IRS special agent who has brought the case is found right in the court after having duly sworn in,

perjured. The prosecutor nor the judge nor the litigating counsels brought this out to the light of the jurors. This was total abuse of Government power against honest U. S. citizens. This should be considered by the U. S. Supreme Court as total prejudice to the petitioners, on the authority of People v Chennault, 2411 2d 185, 181 N.E. 2d 74 (1962). This is also against the sect. 3 – 800 (c) as a mandatory power granted to the court to exclude the witnesses who perjured. Michael D. No. 1 – 98 – 1730, 1st District June 21, 1999. Notwithstanding the above for the present case, the court seems to be prejudiced here in not excluding the IRS special agent and her testimony and abusing its discretion against the petitioners – the victims – in contravention of the Legislative goals with Constitutional restraints and fairness to the victims! A judicial error. This should cry out aloud for the total reversal by the U. S. Supreme Court by the discretionary supreme power vested by the Congress.

Ninth Circuit Court of Appeals announced and granted the writ of certiorari too late to the Patels (Ninth Circuit missed their own statute of limitation).

Even if the circuit court's decision be considered as valid, the writ of certiorari should have been issued within 30 days after filing of the petition in September 1998 per 28 U.S.C. sect 2244. This provides that "The court of appeals should grant a day the authorization to file second or successive application not later than 30 days after filing the motion". Here, in Patels' case the Ninth Circuit Court of Appeals granted it almost after a year (eleven months). Please see the Ninth Circuit Court of Appeals' order of "reversed and remanded" against the U. S. District court's Sua Sponte dismissal order in prejudice obviating Patels' due process Constitutional rights (See Appendix E).

When U.S. citizen's case is dismissed in prejudice his legal rights to come back to the court for the same claim is gone forever. But if U. S. Government District Court dismisses with prejudice, nothing happens to that so-called justice! Moreover, when a U. S. citizen is dismissed without prejudice, his legal right to come back to the same court for the same claim was abrogated by the same justice of the U.S. Eastern District Court and even affirmed by the Ninth Circuit Court of Appeals. (Please also see Equal protection clause – vide supra).

. Therefore the U. S. Supreme Court has the jurisdiction to grant Patels the certiorari to reopen the case by either reversing the case in toto and if not at least reverse and remand the case back to the Ninth Circuit Court of Appeals by granting the certiorari to the petitioners.

District Court and Circuit court erred in failing to appoint a counsel, when the Patels reopened their petition in September 1998. Thus abridging the petitioners' Sixth Amendment constitutional right to a counsel.

When the Patels filed their petition in 1998 Pro se, instead of granting them a counsel, the U.S. Eastern District Court of California hurriedly dismissed the case as Sua Sponte as barred. CJF in August 1992 mentioned that the court "should not cloud the issue of wrecking havoc in the existing process for appointment of a counsel" when one comes for an appeal. This is in total violation of the petitioners Patels' **Sixth Amendment Constitutional right** to have an effective assistance of a counsel. The Ninth Circuit Court of Appeals waited for almost a year (eleven months) without granting a counsel. The Patels then secured a counsel almost pro bono from his College of Law, through recommendation of the Dean of the Law College. The Ninth Circuit Court of Appeals did reverse and remand on the basis of not granting the petitioners their **Due Process Constitutional rights** to the prejudice of the Patels. However, when the U. S. Eastern District Court of California again dismissed the petitioners applying AEDPA wrongfully, the Ninth Circuit Court of Appeals affirmed the same. In McFarland 512 U. S. 849, McFarland had a "stay" for not getting a counsel. Patels' case is on four as far as not getting counsel for the appeal is concerned.

The lower courts failed to review the Patels' constitutional right not to be in Government's custody wrongfully including incarceration

False imprisonment is on direct violation of U. S. citizen's civil rights to be free. U.S.A.'s one of the main theme of being free and independent. The lower courts failed to review its own U. S. citizen's and U. S. Lieutenant Colonel's right to be free and independent. Dr. Patel gave voluntary service in the active army to this country U.S.A.

Now the Patels pray to the U.S. Supreme court the best amongst all the nations of the world (UNO) to review their case of U.S. citizen and Lieutenant Colonel's incarceration whether it was right or wrong by reopening the case by granting "reversal and remand" in the light of Lindh v. Murphy (1997) and Slack v. McDaniel (2000) both are the laws of the land, both in direct parallel to the Congressional intent in enacting AEDPA and they are on all fours with the Patels' case

Suspension clause:

Suspension clause is a U.S. Constitutional right described in U. S. Constitution Article I section 9, cl.2. Which provides that "the privilege of the writ of the Habeas Corpus shall not be suspended unless in cases of

Rebellion or Invasion of the public safety may require it". The legislation violates the suspension clause, if it renders the habeas petition statute into "inadequate or ineffective" to test the legalities of a case. Here, in the Patels' case the petitioners pray to the U. S. Supreme Court to test the legalities of their case in light of AEDPA's statute that has distinctly made their habeas petitions "inadequate and ineffective". Swain v. Presley, 430 U.S. 372, 381 (1972). The section 2244 (d) (1) unconstitutionally suspends the great writ of Habeas Corpus Act because it departs from the evolving basic equitable basic habeas principles. Please see Felka v. Turpin, 518 U. S. 651, 664 (1996) in which the U. S. Supreme Court held that the added restriction on the second habeas petition (if at all it is considered as second in Patels' case) " well within the compass of the evolutionary process which should not suspend the great writ because it is not prejudicial to the Government by dismissing the petition as untimely as the petitioners had already completed their sentences. Please also see Lanchor v. Thomas, 517 U. S. 314, 326 – 27 (1996) discussing Habeas Corpus rule 9 (a), 2244 (d) one year statute of limitation of AEDPA has direct bearing on Patel's case as there is no further Federal remedy available to the petitioners. The Patels' case is distinguished from Ferguson v. Palmetter, No. 01 – 36143, D.C. No. CV –00-00846 – MM. And Tinker v. Moore, 225 F. 3d 1331 (11th cir. 2001). Both the latter cases are the State cases. INS v. St. CYR (00 – 767), 533 U.S. 289 (2001). St. CYR accepted the guilty plea he was offered and would have had a waiver of deportability by the prior rule of section 212 (c), but not when the prior rule was replaced by AEDPA and IIRAIRA for those convicted with an aggravated felony. However, the U. S. Supreme Court argued that the statute will go in contradiction to the Suspension clause, a U. S. Constitutional right. Therefore, the U. S. Supreme Court affirmed the U. S. District Court and the U. S. Circuit Court of Appeals both of which had decided correctly in not applying AEDPA. Here the Patels' case is on all four with St. CYR. There was no statute of limitation prior to AEDPA and the Patels' habeas petition of September 1998 would have been without any statute of limitation placed by AEDPA. Therefore, the AEDPA's statute of limitation should not be applied to the Patels' case on the authority of St. CYR (2001), in contravention to the Suspension clause.

AEDPA sect. 106 (b) now codified as 28 U.S.C. sect 2244 (b) (3)(E) provides that court of appeals denying the permission to file a successive habeas petition shall not be appealable and shall not be subject of a petition for re hearing or for a writ of certiorari. However, U. S. Supreme Court retains jurisdiction to grant certiorari pursuant to 28 U.S.C. sect 2241 & on the authority of Felka 518 U.S. at 660. The legislature's very history is supportive of the above as shown by various Circuit Courts of Appeals. Therefore, the petitioners Patels pray for the Supreme Court not to apply

AEDPA into their non- violent non - capital case, especially because it was originally filed in January 1993, way before AEDPA's enactment on April 24, 1996. The legislative history resolved the above dispute and that be persuasive because initial senators contra view was denied, as it did not pass into the bill. See Gonclaves, 144 F. 3d at 132, citing FEC v. NRA Fund, 5134.s. 88, 95 (1994).

The Patels have faced "Double Jeopardy" against their Fifth Amendment Constitutional right in not accepting Government's plea bargain.

Double jeopardy implies second prosecution for the same offense. It also provides for the second punishment if carried out vindictively (see Baron's dictionary in Double Jeopardy). Double jeopardy is against the Fifth Amendment U. S. Constitutional right, which provides that " Double jeopardy protects against three distinct abuses:

(1) Second prosecution for the same offense after acquittal.
(2) Second prosecution for the same offense after conviction.
(3) Multiple punishments for the same offense".

U. S. v. Halper, 490 U. S. 435, 440 (1989). Double jeopardy clause protects against multiple punishments for the same offense on the authority of Justice of Boston Municipal Court v. Lydon, 466 U. S. 294, 306 (1984). Double jeopardy exists when the prosecutor is merely a tool of Feds and IRS as seen in Koon at 1438. IRS as U. S. agent giving continuous and multiple punishments to the petitioners as follows: Here, in the present case IRS is continuously punishing the Patels by their continuous levies and liens from the time the case started in 1992 till the present. This is above and beyond Patels having undergone their first punishment of incarceration and five years of probation, after their IRS case was wrongfully adjudicated in the U. S. Eastern District Court of California. The IRS' continuous punishments are worse than the first one, namely incarceration and five years of probation. Therefore, the petitioners' Fifth constitutional amendment right is being continuously abridged by the IRS' punishments as above even though the petitioners had to surrender their home and their office building into the Bankruptcy due to IRS' continuous harassment. Therefore, the petitioners pray to the U.S. Supreme Court to order U. S. Governmental agency IRS to cease the second punishment of continuous liens and levies to allow the Patels to breath fresh air in deference to the U. S. Federal laws of Bankruptcy.

Moreover, Patels' counsels tried to force and pressure the petitioners to accept the plea bargain of guilty plea for Mrs. Patel and then to set Dr. Patel completely free as innocent but the counsels and the judge failed to inform them that they will be in double jeopardy by not accepting the plea, the IRS will go on and continuously punish them by liens and levy from

the amount IRS claimed Patels owed approximately $ 30,000.00 for the two years of 1983 and 1984 with penalties and interest. It is now $ 300,000.00 to prior amount of $ 600,000.00 in varying amounts. Later Patels had to take voluntary Bankruptcy chapter 7 of their personal asset including the loss of their home to IRS and office building surrendered to Bankruptcy. Despite of the above and despite of being in Offer and Compromise set up through Ex Senator, Mr. William Roth which is going on and on for approximately last 8 years, IRS continues to lien and levy dollar amounts from their business account, the last one being in May 2003 picking up $ 1,000.00 from their office account. Therefore, the petitioners Patels pray to grant them at least reverse and remand if not total reversal, which will reverse their double jeopardy, the petitioners being in continuous strangling and suffocation from IRS. California penal code S 1016.5, a statutory requirement of judiciary to inform the defendants of the consequences of double jeopardy in deportation of aliens after undergoing the sentencing in immigration case. Such an admonishment of double jeopardy was not made to the petitioners.

Collateral estoppel applied by the lower courts is negated by equitable estoppel.

In as much as the lower courts have applied AEDPA rule wrongfully (vide supra), in the present case, then the Patels had filed in September 1998 on the grounds of equitable estoppel. The latter is if the legal arguments are not sufficient though are right on as the matter of law.

The Equitable Estoppel can overcome statute of limitation **(Equitable tolling)** by the two prongs attack. **In The First Prong**: there has to be extraordinary circumstances, as to why the statute of limitation was overrun. Here, the Patels relied detrimentally on their counsel, who asked for $ 2,000.00 for filing the habeas petition. He first advised in 1993 that there was no statute of limitation for habeas and later advised that it should be filed before probation is over. (Please see Appendix A). Accordingly, the Patels filed in September 1998 before Dr. Patel's five years probation got over in October 1998. Dr. Patel could not comply with as much dollar amount, which the counsel demanded after usurping $ 2,000.00 without at least filing to save the statute of limitation before April 24, 1997, or at least advising the Patels of the newly formed AEDPA statute especially after having advised in 1993 that there was no statute of limitation. He should have advised the Patels in 1996 that the habeas appeal now has a statute of limitation of one year and should be filed before April 24, 1997. **(Detrimental reliance).**

The Patels were in Bankruptcy after undergoing involuntary dissolution of their corporation by the trustee Mr. Randall Pratt of Fresno, California. The Patels had to take Bankruptcy again Chapter 13 in March 1998 and

underwent Chapter 7 dissolution of Bankruptcy, giving up their house to IRS and office building in Bankruptcy. The Patels were under undue economical duress and eventually filed their habeas appeal petition on their own in September 1998, to reopen their pendin g January 1993 habeas appeal, a year and five months after April 23, 1996. This was in accord of the advice of their habeas appeal counsel to file before the end of the probation. Therefore, the Patels met the first prong being in extreme unusual circumstances wherein; it was not possible for them to apply any earlier.

The second prong is that one has to show **diligence** in the matter Dr. Patel knowing their inability to pay the counsel undertook the course of JD in the night college at Oakland, California though he continued with his medical practice and successfully completed the course just to get the knowledge of law and not to practice law. Therefore, the Patels met both the prongs of equity to overcome the statutory statute of limitation. The petitioners pray to the U.S. Supreme court to grant them the certiorari by equitable estoppel (equitable tolling) just in case the legalities be not acceptable to the U. S. Supreme court and then collateral estoppel of the statute of limitation be applied to negate the lower courts' ruling, on the authority of Bennett v. Artuz, 199 F. 3d 116, 119 (2nd cir. 1999). Here, the U. S. Supreme Court declined to adopt a restrictive interpretation of the section 2244 (d) that would raise the bar even higher by severely limit ing to the one-year rule. The provision at issue of AEDPA section 2244 (d) (2) allows for tolling of the statutory period while a properly filed application by other collateral review is pending. In Bennett the court held that regardless of whether claims raised in an application would be found without merit or subject to the procedural bar, so long as the application is properly filed then it is sufficient to toll the one year period of statute of limitation under section 2244 (d) (2) as long as the applic ation for the review comportes with the filing requirements. Here in the Patels' case the application of habeas petition was duly filed in January 1993 comporting with all the filing requirements. Therefore, the statute of limitation of 2244 (d) (2) is equitably tolled for the Patels. Duncan v. Walker, 121 S. Ct. 480 (2000) (No. 00- 121) was later decided similarly on the authority of Bennett. The Patels' case is on all four with the above two cases for the equitable tolling of the statute of limitation of AEDPA. Therefore, the petitioners pray to grant them the certiorari on **" the last resort"** of the **equitable tolling.**

Broad Public Issue at Large:
AEDPA was enacted on April 24, 1996 to short circuit ever repetitive habeas appeals especially to avoid or postpone the capital sentencing given to the violent criminals like murderers. Then it was extended to other violent crimes like rape and terrorism. Then really some circuit courts of

appeals trying to apply to the non - violent acts as in the present case of the Patels v. U.S.A. in non- capital, non-violent tax matters. DNA evidence came to the aid of those who were convicted for the violent crimes; none of DNA as of yet exists for the truthful and law-abiding innocent U.S. citizens charged with crimes, as no such genes are discovered. The great writs of Magna Carta and habeas Corpus acts are threatened to be abolished by AEDPA, a statute enacted in contradiction to the Suspension clause (vide supra).

The people at large in U.S.A. are happy about the innocents who are on death row and now walking away free with DNA evidence. However, U. S. citizens still remain dismayed because no such evidence exists for the truthful and innocent people who are charged with the crimes wrongfully because no such DNA evidence exists as of today. Then looking at the legislative history and of the Congressional intent of not applying AEDPA to non -capital cases that occurred in pre AEDPA era (emphasis added). The present case at issue will resolve the fear of the public at large in U.S.A. when justice will reach the present case by abrogating of the injustice done unto them by wrongful application of AEDPA. Non- capital non- violent case at the present issue of the Patels v. U.S.A. as was wrongfully ruled by the Ninth Circuit Court of Appeals but now can be rectified when the U. S. Supreme Court will pronounce the law of the land. That will prove the U. S. justice system is at its best against all the nations of the world (UNO) and that AEDPA does not abrogate the great writ of Habeas Corpus Act in non- capital and non- violent cases that may have Occurred in pre AEDPA era.

In order to reach justice to the innocent public at large (and the Patels' case in particular), please see Souter J.'s comment (cited in multiple authorities) in the landmark case of Lindh v. Murphy (1997), " all we can say" (re AEDPA) "is that in a world of silk purse and pig's ears, the Act is not a silk purse of art of statutory drafting". That is to say that AEDPA is not the best statute the legislatures enacted and therefore, there has been lots of confusion in its application at various circuits. Therefore, it is best not to apply it to all the cases blindfolded but it may be best applied to the violent crimes trying to delay the sentencing. Therefore, the petitioners pray not to apply the statute of AEDPA to their case.

Conclusion:

In Patels' case justice has been miscarried first by the U.S. District court and then perpetuated by the Ninth Circuit Court of Appeals by affirming wrongful application of AEDPA's statute of limitation. as time- barred. It is of utmost, crucial legal significance hat the Ninth Circuit Court of Appeals reversed their own order of "reversed and remand" on the grounds

of petitioners' Due Process Constitutional Rights infringement (see Appendix E) by the sua sponte dismissal of the U.S. Eastern District Court The latter court without giving due deference to the Ninth Circuit Court of Appeal's order of reversal and remand ordered U.S.A. (the Respondents) (see Appendix G) to rehash and oppose the Ninth Circuit Court of Appeals' order of reverse and remand. This made the appellants reply back to U.S.A. opposition to the Ninth Circuit Court of Appeals' order. In reality the U. S. Eastern District Court ought to have invited the petitioners to proceed with their habeas petition pursuant to section 2255, once the statute of limitation of AEDPA was reversed by the Ninth Circuit Court of Appeals.

The justice got miscarried because it was not litigated fully and short chaining of the Patels did not bring out total circumstances by their litigating counsels.

Whereas, the wealth classification is not a suspect against equal protection constitutional rights, the courts have struck down whenever indigents were denied free trial transcripts that prevent access to the appellate review of criminal conviction. Here, the U.S. Eastern District Court of California O.K.d the transcriptionist's request not to transcribe any further, when she suddenly pretended not to be able to understand Patel's accents, when they were reciting the whole circumstances that were not presented by their counsels. This prevented an access of the whole circumstances to be reviewed by the U.S. Ninth Circuit Court of Appeals in their direct appeals. Therefore, the petitioners pray most earnestly to the U.S. Supreme Court to strike down such an event and grant them at least reversal and remand if not total reversal by granting them the certiorari.

The Patels further aver that their case was of 1983 and 1984- 1040, the charge of attempted income tax evasion. It has been now nearly two decades when it is presented to U. S.. Supreme Court. Contemporary case of Florida in child molestation by the ministers have been overruled in June 2003 because they were out of their statute of limitation. Therefore, the petitioners pray also to throw out their two decades old case, as the statute of limitation for IRS is 10 yrs. Therefore the reversal of the present case will be in order.

The Patels have presented their case with plenty of case authorities and their statutory authorities to prove their case as a **pending case** as of January 1993 habeas appeal and that for non applicability of AEDPA's statute of limitation for their September 1998 habeas petition at issue.

Moreover, Patels have also met both the prongs of equity to gain **equitable estoppel** (equitable tolling), over the one year of statute of limitation of

AEDPA as was applied in September 1998. This is as "last resort" in lieu of legal reasoning, if considered inadequate by the U. S. Supreme Court.

Therefore, the Patels most earnestly pray and exhort to the U.S. Supreme Court to grant them at least reversal and remanding if not total reversal by granting them the required certiorari so that they can finally find the justice by the U. S. Supreme Court proclaiming the law of the land. This will also bring the unification of difference in opinions of the different circuits.

The petitioners are so desperate to get the justice that has been miscarried to the extent that they both are willing to subject themselves to the intravenous Sodium Penthotal injection test to prove the veracity that they never had mens rea to defraud the Government by evading the taxes of 1983 and 1984 but was merely a document of the loan record that they were depositing into the Bank lock box that was arranged through the Bank manager, Mr. Ronald Brown of Great American First Bank. He was willing to testify as to the above but the litigating counsel; Mr. Dale Drozd cancelled him from coming to the court on our behalf.

Therefore, the petitioners pray most earnestly to the U. S. Supreme Court to grant them the certiorari.

Most respectfully submitted on
Dated on

By the petitioners,

Jijibhoy J. Patel, M.D.,

Silloo J. Patel, B.A.

APPENDIX A

BURAK & BERG

Robert Berg
Blackie Burak

Respond to
( ) Concord
(x) SanFrancisco

February 21, 1995.

Dr. Jijibhoy Patel,
2427 N. California St,
Stockton,Ca.95204

Re: Habeas Corpus Relief

Dear Dr. Patel:

I am in receipt of your letter of February 11, 1995. I am puzzled by your comment that you "do not understand why I did not contact (you) to clarify the matter" of my stopping work for you. I wrote to you and told you exactly why I was stopping my work for you, and I received no reply from you until now. The last was not the most recent $ 2,000.00 received, but the threat in a letter on behalf of the bankruptcy trustee to seek much of the back payments I had received in total ignorance that those funds were paid without authorization out of an estate in bankruptcy. Now, over a year after I wrote to you and stopped working for your habeas petition, you claim I knew of bankruptcy proceeding. That is just not the case.

Please inform me as to the exact legal status of the bankruptcy accounts from which I was paid to work on your appeal and habeas matters.

I know of no statute of limitations for habeas relief. However, delay should be explained. To get habeas relief you must still be in some sort of legal restraint: Are you still on parole? When does your parole expire?

If it is jurisdictionally appropriate to move forward with post trial relief, I would be happy to work for you on the same retainer basis, if the bankruptcy action is indeed over and the threat of the suit against me by the trustee is past.

Sincerely,
Sd/
Robert Berg
Rb/lm

One corporate center,
1320 Willow Pass rd, suite 590
Concord, Ca. 94520

100 pine Street,
21 st. fl.
San Francisco, Ca.

BURAK & BERG
Attorneys at law

Robert Berg
Blackie Burak

Respond to
( ) Concord
(x)San Francisco.

September 19, 1995.

Dr. Jijibhoy Patel
2427 N. California Street,
Stockton, Ca. 95204.

Re: Habeas Corpus Relief
Dear Dr. Patel :

I have your letter of September 11, three months after our last meeting, but I do not have a current home phone number for you. I need to speak with you. Your home number (510)830-1607 is disconnected.

The only doctor's declaration I have is from Endsley. Bernardino did not return the declaration I sent to him and Overton was not helpful.

I spoke to Mrs. Brezee today. What do you think she can help us with ???

The most important person to deal with is Robert Mann, and you have still not resolved things with him.

You write that you want to proceed quickly, but I cannot do anything until you deal with Mann.

Sincerely,
Sd/
Robert Berg
Rb/lm
Encl.

One Corporate center

100 Pine street

Burak & Berg
Attorneys at law

Robert Berg
Blackie Burak

Respond to
( ) Concord
(x) San Francisco

January 19, 1996.

Dr. Jijibhoy Patel,
2427 N. California Street,
Stockton, Ca. 95204.

Re : Habeas Corpus relief

Dear Dr. Patel:

I received a telephone call from Mrs. Patel on January 9 that Robert Mann had been paid on your account and that Mann was ready to consult with me on the habeas petition.

I faxed and mailed a letter to Mann on January 10, 1996 referring to that payment and asking that he contact me.

To date, Mann has not contacted me.

Would you please contact Mann and me, both, until the matter is resolved and Mann and I get together to work on your habeas petition. From what I understand from you, Mann is a key witness. So I cannot prepare the habeas petition unless I have his testimony.

Sincerely,
Sd/-
Robert Berg
rb/lm

JIJIBHOY J. PATEL,M.D.,F.R.C.P.(c), F.A.C.P.
Diplomat of the American Board of Internal Medicine
Subspecialty in Cardiovascular Diseases.
Office (209) 466 – 4903..

November 27, 1996.

Mr, Robert Berg,
100 Pine Street,
San Francisco, ca. 94111.

Dear Mr. Berg,

In your PCR action on my behalf, I have researched some of the points on authority which you may find of interest to incorporate in your motion.

1. U. S. Supreme Court in 1967 reversed the conviction of Washington v. State of Texas, where Washington was not allowed to bring favorable witnesses on his behalf, being against his basic Sixth Amendment of Constitutional Rights, to have "Compulsory process clause".

388 U.S. 14,87 S. Ct. 1920, 18 L.Ed. 22 1019.
The above decision was based upon U.S. v. Burr, 25 Fed. Case 30, 35, No. 14, 69 2d
CCD V.A. 1807.

Our case is on four, by the attorney refusing to bring Mr. Ramos, Mr. Mann and Mrs. Marge Breeze, all of them are accountants whose names were submitted to our trial lawyers. But they refused to call them giving different excuses.

This breached my Constitutional right to have a counsel. This information was submitted by myself as oral testimony, post jury verdict as a pleading to grant JNOV. The Judge erred by not reconciling the facts given to Washington v. State of Texas and the infringement of my Constitutional Right to have a counsel.

2, It is also our Constitutional Right by Sixth Amendment by refusal of our trial lawyers to bring Mrs. Camille Green, the informant, and Mr. Matheowetz, the ex corporate lawyer. For me to be able to cross examine them as required by the confrontation clause.

Our trial lawyers failed and breached our Constitutional Rights we had in fact no legal representation as again infringement of our Constitutional Rights.

The Judge was again pleaded for the above by myself, post verdict for JNOV. The Judge erred to recognize infringement of our Constitutional Rights. Legal errors should grant us the relief and acquittal, that our case begs the judicial system to do the justice.

91 Harvard Law review 567 (1978)
Western Compulsory Process II, 74 Mich. L. Rev. 191 (1975)
Western compulsory process 73 Mich. L. Rev. 71 (1974).

3.By not calling any witness to "opine" on our behalf, we were forced to testify against Fifth Amendment Constitutional Right. The judge was informed by my pleading for JNOV, who ignored our Constitutional Right.

4.Judge erred in not questioning why a juror cried when asked if her vote is free and not coerced!!

5.When we inquired the name of the juror from trial lawyers, Mr. Drozd refused, claiming that he did not wish for us to have mistrial! Did we really have legal representation?

6. Unfair surprise: Against FRE 404 is barred especially in criminal matters.

I have prosecuted with various documents by the prosecutor, that I had never seen before like :

a. My corporate seal certificate from California State Sectretary.
b. Letter from travel agent for my travel to India.
c. IRS agent's accounting posters.

7. Perjury : IRS special agent perjured in the court regarding my ex loans as proved by Malcolm Segal. Though this was not in front of the jury but was under oath both the times and in front of the judge. She even accepted that she did perjure in front of the judge when Malcolm Segal asked her about it. The judge erred by not taking any action on this account against IRS case and decline as mistrial. Notwithstanding, judge also erred by not excluding the whole accounting charts from the evidence.
8. Due Process infringed: The prosecutor knew of all good works, I did but he wanted to keep my mouth shut and made my lawyer intimidate me by saying that if I say anything good about myself, I will be a dead duck.

   This is proven as the prosecutor wanted to have stat side bar and recess as soon as I spoke one good word. My lawyer, working with the prosecutor to keep the jurors unaware of my good character. Did I have a legal representation, as required per my Constitutional Right? No. my Constitutional Right is infringed.

   The judge on the side bar apparently agreed. Erred again.

   But most important for me is to have a fair due process and it was breached, when the prosecutor knowing about these witnesses who could have exculpated me from the wrongful conviction and the prosecutor concealed the fact from triers of fact and again there was infringement of my Constitutional Right.

   While in his high office, just before the trial, Mr. Segal claimed that he or his daughter will never go to an M.D. with foreign accents!!

10. During trial preparation in the evening after a day of trial, Mr. Segal started screaming scornfully saying that he is spending his time, out of his office without getting compensated in dollars. He short chained us as unethical lawyer's conduct.

11.Mr. Drozd slammed a fat book on the wall angrily when Mrs. Patel answered the question that he asked her. She was terribly intimidated and claimed that she erred in answering in the court the next day.

12.FRE 408 abreached. When the defendant (I) wanted to mention to the jury that I would have been granted freedom if Mrs. Patel would accept the guilty plea by force. This was refused by Mr. Segal. My question would have been to jury that if the prosecutor is suing me for the wrong doing on one hand and letting me free on the plea bargain on the other hand. Isn't that an obstruction of justice by the prosecutor?

13. Extrinsic fraud: It is an extrinsic fraud when one is prevented from asserting all that one is entitled to assert. It is a ground for equitable relief from conviction. 468 S.W. 2d. 160, 163.

14. Character evidence are admissible when defendants' character (honesty, integrity and credibility) is at issue – FRE 404 (a). These were prevented against FRE 401 (a).

When good habits like charity works or dollars for food for the poor patients etc. are provided the lawyer is not placing the client in the best possible light he is supposed to in our adversary system; he has no attorney in fact as insufficient and unethical services against our Constitutional Right that is abridged, on more than one count as above.

15. Expungement and sealing the record: N.J.S.A. 2c: 52 – 2 Many courts expunge and seal the defendants' records after the good conduct of the defendant to prevent civil disability eg. Probation by California and New York State licensing boards and community services as penalty as double jeopardy.

I would like to add a few more witnesses (patients), who will opine for our integrity and credibility: a. Mr. Henry McLaughlin, b. Mr. Russell Westfall, c. Mrs. Reba Westfall, d. Charles Jeffrey.

If you need them please let me know. My ex congressman, Mr. Normal Shumway would testify on my behalf but at present he is in Japan.

Please note that Hawkin's spousal privilege rule abridged for us by the court to give testimony of our spousal communication at lunch break. Even if presumed that it was criminal. Hawkins v. U.S. 74, 77 (1958). Lampart argues that Hawkins should not have been overruled. –66 Iowa L. Rev. 724, 734 (1891).
Making us to take witness stand was against FRE 505 (a) & (b).

If I come across more points I will write to you,
Thank you,

Very truly yours,

Sd/-
J. J. Patel, M.D. FRCP(c) FACP.

APPENDIX B

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
Apr 14 2003
Cathy A. Catterson, clerk
U.S.Court of Appeals

JIJIBHOY PATEL; and SILLOO PATEL,

Petitioners – Appellants,

v.

UNITED STATES OF AMERICA

Respondent – Appellee

No. 02-15642

D.C.No.CV-98-01723-WBS
Eastern District of
California,
Sacramento

ORDER

Before: SCHROEDER, Chief Judge, NOONAN, and CLIFTON, Circuit Judges.

The panel has voted unanimously to deny appellant's petition for rehearing and to deny the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on the petition for rehearing en banc, Fed. R. App. P. 35 (b).

The petition for rehearing and petition for rehearing en banc are DENIED.

APPENDIX C

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 30 2003
Cathy A. Catterson
U. S. Court of Appeals

No.02-15642

JIJIBHOY J.PATEL and SILLOO PATEL,

Petitioners – Appellants,

v.

UNITED STATES OF AMERICA,

Respondent – Appellee.

D.C.No.CV-98-01723-WBS

MEMORANDUM

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Argued and submitted January 15, 2003
San Francisco, California

Before: SCHROEDER, Chief Judge, NOONAN and CLIFTON, Circuit Judges.

Dr. Jijibhoy Patel and his wife Silloo appeal the dismissal of their 28 U.S.C. section 2255 petition as untimely under the Antiterrorism and Effective Death Penalty Act's ("AEDPA") one-year statute of limitations. We affirm.

This disposition is not appropriate for publication and may not be cited to 0 by the courts of this circuit except as provided by Ninth Circuit Rule 36 –3.

The Patels argue that this petition should relate back to their previously dismissed petition in 1993.the district court dismissed the earlier petition without prejudice because its claims overlapped those in pending direct

appeal of Patels' tax evasion conviction. Because the earlier petition was properly dismissed, there was no pending petition to which the Patels' new petition could relate back or which they could amend. See Henry v. Lungren, 164 F. 3d 1240, 1241 (9th Cir.1999).

The Patels filed their second habeas petition outside of AEDPA's one-year limitation period for prisoners to file habeas petitions in federal court. As to Dr. Patel, the district court properly dismissed the petition as time-barred. See Green v. White, 223 F. 3d 1001, 1003 (9th Cir. 2000). Silloo Patel was not in custody when the 1998 petition was filed. Because it does not relate back to the earlier petition, the district court lacked jurisdiction over her petition. See Henry, 164 F. 3d at 1241.

AFFIRMED.

APPENDIX D

FILED
JAN 10 1993
Clerk U.S.COURT
Eastern District of California
By_____
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
----------0000000----------

UNITED STATES OF AMERICA,
Plaintiff,
v.
JIJIBHOY PATEL and SILLOO PATEL,
Defendants.

No. CR.S-90-222-WBS
ORDER

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On January 14, 1993; defendants Jijibhoy and Silloo Patel filed a motion to vacate, set aside, or correct their sentences under 28 U.S.C. section 2255. The grounds urged are ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668 (1984).

Previously, on October 8, 1992; defendants each filed Notice of Appeal to the Ninth Circuit from their judgments of conviction. Amended notices of Appeal were filed on October 13, 1992. Defendants' appeals are presently pending in the Court of Appeals. In the absence of "extraordinary circumstances", the orderly administration of justice precludes a district court from considering a section 2255 motion or other collateral challenge to a criminal conviction while a direct appeal is still pending. United States v. Taylor, 648 F. 2d 565 (9th. Cir.1981); Jack v. United States, 435 F. 2d 317 (9th Cir. 1970).

Since the claims presented in the motion are based in substantial part upon matters outside the trial record, those claims appear to be of the type that cannot be adjudicated on direct appeal. See United States v. SanClemente – Bejarano, 861 F. 2d 206, 211 (9th Cir. 1988). On the other hand the claims raised in the motion appear to overlap those presented in the direct appeal. For example the motion states that the direct appeal raises each and every ground asserted in the motion for new trial, including the failure of trial counsel to request juror IRS audit information. That

ground, it seems, would also bear upon the effectiveness of counsel raised in this motion.

Defendants have not shown the existence of extraordinary circumstances which would justify departure from the general rule in this case. It would be imprudent to conduct simultaneous review in this court and the Court of Appeals when the issues presented are overlapping and a decision of the Court of Appeals favorable to the defendants could moot the motion in this court. The more prudent course is to deny the motion here without prejudice to the right of defendants to review it after final disposition of their direct appeals or at such earlier time as the Court of Appeals may direct.

The motion to vacate sentence is therefore denied, without prejudice to the right of the defendants to file their motion for relief under section 2255 after the final disposition of their appeals or as such earlier time as may be expressly authorized by the Court of Appeals.

Dated: January 19, 1993

Sd/-
William B. Shubb
UNITED STATES DISTRICT JUDGE

(Please note that the number of the lines could not be reproduced by the difficulties).

APPENDIX E

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
OCT 23 2001
Cathy A. Catterson, Clerk
U. S. Court of Appeals

UNITED STATES OF AMERICA

Plaintiff – Appellee,

v.

JIJIBHOY J. PATEL and
SILLOO J. PATEL,

Defendants – Appellants.

No.00-15235

DC # CV-98-01723-WBS
DC # CR-90-00222-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted October 15, 2001**

Before: REINHARDT, GRABER and BERZON, Circuit Judges.

Jijibhoy J. Patel and Silloo J. Patel appeal pro se the district court's *sua sponte* dismissal of their 28 U.S.C. section 2255 motion challenging the jury trial conviction for two counts of attempted income tax evasion, in violation of 26 U.S.C. section 7201. We have jurisdiction pursuant to 28 U.S.C. section 1291 and 2253, and we reverse and remand.***

We granted a certificate of appealability as to the issue of whether the district court erred for sua sponte dismissing the Patels' 28 U.S.C. section 2255 motion as time-barred. We review de novo the dismissal of 2255 motion on statute of limitation grounds. *See Herbst v. Cook,* 260 F. 3d 1039, 1042 (9th Cir. 2001).

The district court may sua sponte dismiss a section 2255 motion on statute of limitations grounds. *Id.* at 1042; *cf. United States v. Garcia*, 210 F. 3d 1058, 1060 (9th Cir. 2000)(stating that the statute of limitations period for section 2254 petitions and section 2255 motions is not treated differently). However, before dismissing, the district court must first give adequate notice and opportunity to respond. *Id.* at 1043. Review of the record demonstrates that the Patels were neither given notice nor the opportunity to respond prior to the district court's *sua sponte* dismissal.

Accordingly, the order dismissing the Patels' section 2255 motion as untimely is reversed and the case remanded for the further proceedings. *See id.* at 1044.

REVERSED and REMANDED.

- This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36 – 3.

** The panel unanimously finds this case suitable for decision without oral argument. See fed. R. App. P. 34 (a) (2). Accordingly, defendants' request for oral argument is denied.

*** We reject the Government's argument that we lack jurisdiction over Silloo Patel because she allegedly was not in custody when the section2255 motion was filed in the district court. 28 U.S.C. section 1291 (vesting the court of appeals with appellate jurisdiction over all final decisions of the district courts); *Blazak v. Ricketts*, 971 F. 2d 1408, 1410 (9th Cir. 1992) (per curiam) (stating that the district court's order was a final appealable order because it disposed off all claims).

APPENDIX F

FILED
AUG 2 1999
Clerk, U.S. District Court
Eastern District of California
By_____
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
----------00000----------

JIJIBHOY J.PATEL, M.D.,
et al.,
Petitioners,
v.
DIRECTOR OF CORRECTIONS,
MR. C.A. TERHUNE,
et al.,

Respondents.
_____/

No. CIV.S-98-1723 WBS
No. CRIM.S-90-222 WBS

ORDER

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Petitioners seek relief under 28 U.S.C. section 2255.* To the extent petitioners move to vacate, set aside or correct their 1992 convictions and sentences their petition is untimely. See 28 U.S.C. section 2255; see Caldron v. United States Dist. Court, 112 F. 3d 386 389 (9th Cir. 1997) (construing limitations provisions of section 2244); see also United States v. Craycraft, 167 F. 3d 451, 456 & n. 4 (8th. Cir.1999) (and cases cited therein).

To the extent petitioners complain about the conditions of their confinement while in federal custody their action is properly construed as Bivens action. See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U. S. 388 (1971). So construed that challenge is also untimely. Petitioners allege that they only served six months in federal custody following their 1992 convictions, and thus any claim that arose

during that period of custody is long since time barred. See Van Strum v. Lawn, 940 F. 2d 406 (9th. Cir. 1991) (court applies to Bivens and section 1983 actions the applicable limitations period from the state in which it sits); McDougal v. county of Imperial, 942 F. 2d 698, 672 (9th. Cir. 1991) (California's one-year limitations period for personal injury actions applies to section 1983 action).

IT IS THEREFORE ORDERED that the petition filed September 4, 1998; be and the same hereby is DISMISSED. In addition to effecting service by mail upon the petitioners, the clerk is directed to serve a copy of this order upon the United States Attorney.

Dated: July 30, 1999

Sd/-

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

- Though the caption of the petition suggests an action against state officers, there are no allegations against state officials in the body of the petition. Rather, petitioners' allegations concern their federal convictions and resulting detentions.

APPENDIX G

FILED
NOV 20 2001
Clerk, U. S. District Court
Eastern District of California
By_____
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
----------000000----------

UNITED STATES OF AMERICA No. CR.S-90-222WBS

Plaintiff,

v.

JIJIBHOY J. PATEL and SILLOO J. PATEL ORDER

Defendants.

----------00000----------

On September 4, 1998, defendants filed a motion to vacate, set aside, or correct sentence, pursuant to Title 28 U.S.C. section 2255. On August 2, 1999; the petition was dismissed by the undersigned. On August 23, 2001; the united States Court of Appeals for the Ninth Circuit reversed and remanded the order and on November 15, 2001; the mandate was issued to this court.

IT IS THEREFORE ORDERED that the United States shall file and serve its opposition to the motion on or before December 19, 2001. The defendants shall file their reply to the opposition on or before January 16, 2002.The matter will then be taken under submission.

Dated: November 19, 2001

Sd/- _____
WILLIAM B. SHUBB

APPENDIX H

UNITED STATES DISTRICT JUDGE

(please note that the numbers in the margin for the lines are not reproduced for the difficulties of the pro se)
AD245S Modified (3/90) sheet 1- Judge including sentence under the sentencing R Act

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UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA
v.
SILLOO JIJI PATEL
(Name of Defendant)

JUDGMENT, PRE SENTENCING REFORM ACT
Case Number: Cr.S-90-0222-01 WBS

William Haynes, Esq.
Defendant's Attorney
50 California Street, suite 1420
San Francisco, Ca. 94111.

THE DEFENDANT:
(X) Was found guilty on count(s) ONE (1) & TWO (2) OF THE INDICTEMENT after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involved the following offenses:

Title & section	Nature of offenses	Count Number(s)	Date of offense
26 USC 7201	Attempted Income Tax Evasions	I and II	1983 and 1984

The defendant is sentenced as provided in pages 2 through 4 of this Judgment.
(X) The mandatory special assessment imposed by this Judgment is $ 50 as to count II only, payable within 30 days of release from confinement.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
279-46-2992
Defendant's mailing address
9535 Duchess Lane
Stockton, Ca. 95209
Defendant's residence address:
(including county of residence)
9535 Duchess Lane,
Stockton, Ca. 95209
San Joaquin County

September 30, 1992
Date of Imposition of Sentence
sd/- WILLIAM B. SHUBB
Signature of Judicial Officer
WILLIAM B. SHUBB, USDJ
Name and Title of Judicial Officer
10/5/92
Date

FILED
OCT 5 1992

AD245S Modified (3/90) sheet 1- Judge including sentence under the sentencing R Act

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA
v.
JIJIBHOY PATEL
(Name of Defendant)

JUDGMENT, PRE SENTENCING REFORM ACT
Case Number: Cr.S-90-00222-01 WBS

Ed Simpson, Esq.
Defendant's Attorney
50 California Street, suite 1420
San Francisco, Ca. 94111.

THE DEFENDANT:
(X) Was found guilty on count(s) ONE (1) & TWO (2) OF THE INDICTEMENT after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involved the following offenses:

Title & section	Nature of offenses	Count Number(s)	Date of offense
26 USC 7201	Attempted Income Tax Evasions	I and II	1983 and 1984

The defendant is sentenced as provided in pages 2 through 4 of this Judgment.
(X) The mandatory special assessment imposed by this Judgment is $ 50 as to count II only, payable within 30 days of release from confinement.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
177-40-6152
Defendant's mailing address
9535 Duchess Lane
Stockton, Ca. 95209
Defendant's residence address:
(including county of residence)
9535 Duchess Lane,
Stockton, Ca. 95209
San Joaquin County

September 30, 1992
Date of Imposition of Sentence
sd/- WILLIAM B. SHUBB
Signature of Judicial Officer
WILLIAM B. SHUBB, USDJ
Name and Title of Judicial Officer
10/5/92
Date

FILED
OCT 5 1992
Clerk, U. S. District Court
Eastern District of California
By_____
Deputy clerk

APPENDIX I

Clerk, U. S. District Court
Eastern District of California
By_____
Deputy clerk

FILED
Jul 26 1993
Cathy A. Catterson, Clerk
U. S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA) No.93-15337
Plaintiff – Appellee) DC # CR-90-222-WBS
) CV-93-64-WBS
Vs.) Eastern California
JIJIBHOY PATEL; SILLOO PATEL;) ORDER
)
Defendants – Appellants.)
_____)

Before: BROWNING, TANG and NORRIS, Circuit Judges

Appellants' motion to remand this case is denied. Appellants' motion is construed in part as a motion to dismiss voluntarily this appeal. So construed, the motion is granted. This appeal is dismissed.

Appellants' motion for substitution of counsel is denied as moot.

FILED
AUG 19 1993
Clerk, U.S.DISTRICT COURT
Eastern District of California
Sd/-_____
DEPUTY CLERK

A TRUE COPY
Cathy A.Catterson
Clerk of Court
ATTEST
AUG 17 1993
By sd/-_____
Deputy Clerk

Crcal/7.21.93/23

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

----------00000----------

BEFORE THE HONORABLE WILLIAM B. SHUBB, JUDGE

--------00000-----

UNITED STATES OF AMERICA,
Plaintiff,

No. Cr. S-90-222

vs.

JIJIBHOY PATEL AND
SILLOO PATEL,

FILED

Defendants.

FEB 8 1993
Clerk, U. S. District Court
Eastern District of California
By_____
Deputy Clerk

----------000---------

REPORTER'S TRANSCRIPT
MOTION FOR RECONSIDERATION
Wednesday, February 3, 1993

---------000---------

Reported by: KELLY O'HALLORAN, CSR # 6660

defendants' request, we could have a resolution he seeks before the defendant begins to execute his sentence. I cannot imagine that we could have a full briefing, a full discovery period, a full argument and hearing within 60 days.

MR. ROSS: Impossible, which is precisely why it will be necessary to include a motion to stay judgment within the other motion.

THE COURT: Yes. So I assume he'll make that motion to the Court of Appeals.

MR. .NUECHTERLEIN: That motion has been made here, and it was denied. It was made before the Court of Appeals, and the Court of Appeals denied the motion for stay finding there was no exceptional circumstances. He can take a third shot at it.

THE COURT: Is there anything else you want me to do?

Do you want to prepare an order just very summarily to denying the motion for reconsideration for the reasons stated?

MR. NUECHTERLEIN : I can prepare that order.

THE COURT : All right. Make sure it says without prejudice to his right to proceed ---

MR. NUECHTERLEIN : I'll model it after the Court's earlier order. I don't think anything has changed since